EXAMINING THE SEC'S AGENDA, OPERATIONS, AND FISCAL YEAR 2018 BUDGET REQUEST

HEARING

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EXAMINING THE SEC'S AGENDA, OPERATIONS, AND FISCAL YEAR 2018 BUDGET REQUEST

Tuesday, November 15, 2016

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 10:06 a.m., in room 2128, Rayburn House Office Building, Hon. Jeb Hensarling [chairman of the committee] presiding.

Members present: Representatives Hensarling, Royce, Lucas, Garrett, Neugebauer, McHenry, Pearce, Posey, Luetkemeyer, Huizenga, Duffy, Mulvaney, Hultgren, Ross, Pittenger, Wagner, Barr, Rothfus, Messer, Schweikert, Tipton, Poliquin, Love, Hill, Emmer; Waters, Maloney, Velazquez, Sherman, Meeks, Clay, Lynch, Scott, Green, Moore, Himes, Kildee, and Sinema.

Chairman HENSARLING. The Financial Services Committee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

Today's hearing is entitled, "Examining the SEC's Agenda, Operations, and Fiscal Year 2018 Budget Request." I now recognize myself for 3 minutes to give an opening statement, but I warn everybody I am going to take a lot longer because there is unanticipated news.

First, before proceeding to the purpose of this hearing, I do want to note for all my colleagues that as we begin this hearing today, in room B318 of this very building, the Rayburn building, our friend, our colleague, that great American hero and patriot Sam Johnson, is being honored by having that very room, B318, named after him.

I think we all know that he is a decorated war hero who served his Nation with great courage, and great valor in Korea and in Vietnam, and he spent 7 years enduring torture in the infamous Hanoi Hilton.

But we also know him to be one of the kindest, most gentle souls in this institution, and he has many distinguished accomplishments for the people of his district and from his position on the Ways and Means Committee. I personally look forward to visiting the Sam Johnson Room soon, and I hope all my colleagues look forward to that, as well.

This morning, we welcome Securities and Exchange Commission Chair Mary Jo White. And I will take a little longer due to news that we received last evening that the Chair intends to step down at the end of the Obama Administration. I do wish to acknowledge all that Chair White has now completed over 2 decades of distinguished public service as a U.S. Attorney, and as Chair of the Securities and Exchange Commission. She has brought an incredible amount of professionalism to her position.

She is known for her independent judgment, which is greatly admired and respected. I also want to personally thank her for being one of the witnesses, one of the few witnesses from the Administration who has never requested an artificial time limit on her attendance at a hearing. She has always made herself available to this committee, and she has always made herself available to all subcommittees. She has, indeed, epitomized what it means to be an accountable agency to Article I of the Constitution, and she is to be commended for that.

Also, she has always, always submitted her testimony on a timely basis. If there were cash and valuable prizes we could award you, Madam Chair, for such an accomplishment, we would, but I am sure we would breach a number of ethical and legal considerations by doing so.

She has always made her division and office directors available here, and also at the Capital Markets Subcommittee hearings. And again, the accountability and transparency that she has brought to this office is greatly, greatly admired. But just in case you are lulled into a false sense of security, Madam Chair, we still have some concerns and we still have some disagreements.

So it has been almost a year since your last appearance here, and there are many subjects we are eager to discuss. Chief among them are the SEC's ongoing failure to develop a capital formation agenda. Notwithstanding two very minor rule changes approved last month, the SEC has done little to promote capital formation since Congress passed the JOBS Act in 2012. The failure by the SEC stems in part from the Commission's refusal to act on recommendations made by its Small Business Capital Formation Forum.

I encourage the SEC to review these recommendations and act on those that will help small businesses to access the capital markets so they can improve, grow, and provide economic opportunities for all American workers.

Also languishing at the SEC is a directive passed by Congress requiring the SEC to simplify its disclosure regime. The FAST Act that became law nearly a year ago requires the SEC to eliminate or reduce burdensome, duplicative, or outdated disclosures.

Chair White, I also know that you are under enormous pressure from those who are intent on politicizing the SEC's disclosure regime. But you have an obligation to follow the law and not appease extremists whose ideological objectives have nothing to do with the SEC's core mission.

In addition, the SEC's failure to require the electronic delivery of mutual fund documents is disappointing. How can the SEC force public companies to engage in social, environmental or sustainability disclosures while simultaneously promoting the wasteful use of paper, the cost of which is ultimately borne by investors? It is time for the SEC to move into the 21st Century and allow for the e-delivery of mutual fund documents.

Finally, we need to discuss the SEC's budget request. As I look at the disturbing national debt clock before me and to my side, I see no need for the SEC to receive a prefunded escrow account of more than $290 million for a potential move of its headquarters. The SEC will have to increase its fees to prefund the move, which is nothing less than a tax on capital formation.

Furthermore, the claims that the SEC is underfunded are not supported by the facts, since the SEC's budget has increased by a whopping 325 percent since the year 2000, an increase that the American people do not enjoy. However, the SEC's current budget of $1.6 billion does not account for the money in its reserve fund, which can include up to $100 million, plus another $25 million in unused funds that carry over from the previous fiscal year.

Finally, Chair White—and this is most important—whenever there is a transfer of power from one Presidential Administration to another, there is a temptation for Federal agencies to rush pending rulemakings to completion as a way of submitting the policy priorities of the outgoing Administration.

But this type of midnight rulemaking is neither conducive to sound policy nor consistent with principles of democratic accountability. As there are currently two vacancies at the Commission, absent an emergency, given your current reputation and legacy, I would strongly urge you to respect the results of last week's election and resist the temptation to finalize any regulations, including Dodd-Frank Title VII regulations, in deference to the right of the incoming Administration to set its own priorities upon taking office in January.

I now yield 5 minutes to the ranking member.

Ms. WATERS. Thank you very much, Mr. Chairman.

And thank you, Chair White, for being here today, I am truly disheartened to hear that you will be stepping down, Chair White, considering there is so much at stake and so much to fight for.

But I am encouraged because of all of the kind words that Chairman Hensarling had to say about you when he started his testimony today. That is the nicest I have heard him be to you and any of the others in our oversight agencies since we have worked together here, so—

Chairman HENSARLING. Will the gentlelady yield?

Ms. WATERS. Yes, I will yield.

Chairman HENSARLING. If anybody on your side of the aisle wishes to depart, I will say very kind words about them.

[laughter]

Ms. WATERS. Well, I am sure since you have said such kind words about Chair White today, you will be asking her to please stay, please don't go.

[laughter]

Also, I am appalled that the reaction on Wall Street to Tuesday's election is record highs for bank stocks, as the industry rallies on the news of a massive, destabilizing, lawless agenda. But let me be clear—short-lived increases in the stock market are not the same as real, hard-earned economic growth. And the demise of the regulations that Wall Street is cheering are the better regulations that have made our consumers, investors, and economy safer and more resilient.

In fact, just yesterday, Wells Fargo stock closed at the highest price this year, on the expectation that a Trump Administration and Republican Congress will erase its culpability. Indeed, we are facing uncertain times, and at the forefront of that uncertainty is a President-elect who does not have a coherent or consistent stance on anything.

We don't know if he is building a wall or just a fence. We don't know if he is repealing Obamacare or cherry-picking some provisions that he now seems to support. We don't know who he is, what he stands for, or what kind of President he will be. We cannot rely on anything he says because it changes from one day to the next.

So when Mr. Trump talks about financial services reform and dismantling the Dodd-Frank Act, what does he mean? Does he mean letting the Wall Street banks he is so indebted to write their own rules? Does he mean repealing the fair housing laws that the Department of Justice sued him over decades ago? Does he want to repeal investor protections and make it harder for the SEC to go after bad actors? Does he want to gut the Consumer Financial Protection Bureau despite the agency being the strongest champion of everyday consumers?

Does he mean breaking up the banks by reinstating Glass-Steagall? In that regard, I am sure we could find some common ground.

Does he mean closing the carried interest loophole and ensuring that private equity fund and hedge fund managers pay the same taxes that everyday Americans pay? Will he pay the same taxes that everyday Americans pay?

I am curious to see how Republicans in Congress react to this wide-ranging, sometimes progressive agenda. Mr. Trump said he is not beholden to Wall Street and other special interests. Yet here he is with rumored appointments of Wall Street insiders and their friends in Congress to run his Administration.

Mr. Trump also said he wants urban renewal and to ensure that African-Americans have access to loans to start small businesses and get mortgages. Yet he appoints a leader of the white nationalist movement as his chief strategist in the White House, and he himself has made racist, misogynist, and demagogic comments.

Chair White, even though you are about to leave I hope you will share with this committee and the incoming Administration the important role the SEC plays in our financial system. I hope you will explain the importance of a well-funded cop on the securities beat and strong investor protections.

The SEC has been the victim of woefully inadequate budgets as a result of Republican obstructionism for years. Despite the crucial role that the SEC plays policing our ever-expanding financial markets, we are now at a crossroads where Wall Street is poised to profit off of American consumers and investors.

If we enact these special interest wish lists or if the SEC weakens its rules at the expense of the greater good, our economy will go right back to the darkest days of the financial crisis. I hope that common sense will prevail.

With that, I yield back the balance of my time.

And, Chair White, I apologize for not spending more time on the SEC and a lot of time on Mr. Trump, but that is what I am going to be doing for a long time to come.

I yield back the balance of my time.

Chairman HENSARLING. The Chair now yields 2 minutes to the chairman of our Capital Markets Subcommittee, the gentleman from New Jersey, Mr. Garrett.

Mr. GARRETT. Thank you, Mr. Chairman.

And welcome, once again, for the last time, Chair White, to our committee. Before I begin, let me just echo many of the positive sentiments expressed by Chairman Hensarling regarding your tenure at the SEC.

Every SEC Chair receives criticism when they sit here and around from both the left and the right about certain policy positions that they take. But recently, you have had to endure, I would say, an unprecedented level of attack from certain groups and from individuals, as well, who have called out your integrity and called out your professionalism and put them into question.

They have even so gone so far as to call for you to break the law, if you will, or be fired for your refusal to follow their direction. Chair White, it is clear from these many hearings that we have had that you and I disagree on certain policy issues, on more than a few occasions.

But I can say this here, that I have never, ever questioned your professionalism. I have never, ever questioned your integrity and your devotion to doing the good in your work. It is a difficult job that you had, and you have handled it very well. And you have done so for all the right reasons.

So I just want to take this moment to say thank you for your service and for your thoughtful approach with which you have tackled a number of issues, in particular, the area that I spend a lot of time on, the equity markets, which continues to be an important priority for the SEC.

Now, having said all that, I did mention that we have disagreed on certain policy issues a couple of times. So let me highlight a couple of those before we go off.

Despite the SEC having an important mission to, as you know, facilitate capital formation, the SEC, I believe, has still not organically, within itself, developed a capital formation agenda, and instead, really I believe has relied almost exclusively on our committee and the full committee in Congress, if you will, when it comes to trying to change some of that and trying to modernize some of those areas of securities laws for the benefit of the small and the medium-sized enterprises. These are things that we have talked about.

This, despite the fact that, as the chairman was just mentioning, the SEC's budget has not only continued to grow, but the agency has again requested a substantial increase without detailing how it will expand those on these missions.

And finally, I also want to remain concerned that the SEC has not done an adequate job to assert its jurisdiction, this is important, in expertise in the capital markets when other regulators attempted to trample on your turf, whether it is the Department of Labor or prudential regulators over at FSOC or at the FSB.

So with that said, I hope that in your testimony today, as you wrap things up, that you address both of these issues and others to ensure that Congress and the SEC is actually prepared to carry out its threefold mission before Congress decides whether the agency deserves that increase in budget.

And with that, Mr. Chairman, I yield back.

Chairman HENSARLING. The gentleman yields back.

Today, we welcome the testimony of the Honorable Mary Jo White, Chair of the SEC. Chair White has previously testified before this committee on many occasions, so I believe she needs no further introduction, and she has received her deserved accolades.

Without objection, Madam Chair, your written statement will be made a part of the record, and you are now recognized for 5 minutes to give an oral presentation of your testimony.

STATEMENT OF THE HONORABLE MARY JO WHITE, CHAIR, U.S. SECURITIES AND EXCHANGE COMMISSION

Ms. WHITE. Thank you very much, Chairman Hensarling, Ranking Member Waters, and members of the committee. Thank you all also for your kind remarks. I appreciate it very much. It is my honor to serve.

And again, thank you for inviting me to testify today on the current work and initiatives of the SEC, as well as on our Fiscal Year 2018 preliminary authorization request.

As this committee knows well, the SEC is a critical, independent agency that is charged with protecting millions of investors and overseeing the strongest and safest markets in the world. I am very proud of the Commission's hard work and many accomplishments since I became Chair in April 2013. We have achieved record numbers of enforcement actions and examinations each year. We have completed dozens of transformative rulemakings, including fundamental reforms to money market funds, credit rating agencies, and the securitization markets.

We have built important, new regulatory regimes for capital raising, like critical market infrastructure and municipal advisers. And we have put in place enduring frameworks for our future work in areas that are central to the SEC mission: asset management; equity market structure; and disclosure effectiveness.

Our latest results in enforcement and examinations exemplify the agency's high level of performance during this time. In Fiscal Year 2016 alone, the Commission brought over 850 enforcement actions, an unprecedented number; secured over $4 billion in orders directing the payment of penalties and disgorgement; and performed approximately 2,400 exams, a 7-year high that reflects a smarter, more efficient program.

The strength of our enforcement program can also be seen in the kinds, complexity, and importance of our cases that span the markets and the securities industry, including numerous first-of-their-kind actions.

As this past year also shows, the Commission, with only three Members, was able to continue to pursue a very consequential set of policy measures designed to protect investors, strengthen the markets, and open new avenues for capital raising.

Since I last testified, the agency has, for example, advanced major rules addressing important equity market structure issues, including the transparency of ATS's and order handling practices, while moving forward with a comprehensive assessment of other fundamental structural questions.

And this afternoon, the Commission is scheduled to consider in an open meeting approving a final plan for the critical, consolidated audit trail. Over the last year, we have also continued implementation of a series of proposals to address the increasingly complex portfolios and operations of mutual funds and exchange traded funds. We adopted final rules to modernize the data reported by both funds and their advisers, completed rules for enhanced liquidity management by funds, and adopted a proposal for new controls on their use of derivatives.

We also adopted new rules to better enable businesses to raise capital through local and regional offerings and advanced our comprehensive review of the effectiveness of our disclosure regime, including through several detailed proposals, and along with several other rules prescribed by statute, we finalized critical components of the regulatory regime for security-based swaps and established new standards for the clearing agencies that stand at the center of our financial system.

In addition to our many discretionary initiatives, the Commission has now adopted rules for nearly 80 percent of the mandatory rulemaking provisions of the Dodd-Frank Act and all of the rulemakings directed by the JOBS Act. We have also made significant progress on the rulemakings required of us late last year under the FAST Act.

While our enforcement and our rulemaking work are perhaps the most prominent examples of the agency's achievements, the imperatives of our mission are also carried forward by our exceptional and diverse staff every day, from reviewing thousands of filings each year, to assessing complex submissions from exchanges and other SROs, to incisive, economic analyses and publications. And as publicly reported today, the Commission has, for the second year in a row, received from GAO an unmodified audit report with no material weaknesses or deficiencies on the SEC's financial statements.

The Commission today is, I believe, a stronger and more effective agency, and I am honored to have led it during this time of progress. But significant challenges remain if we are to adequately address the growing size and complexity of the securities markets and the ever more sophisticated financial services industry.

And it is critical that the SEC have the resources required to discharge its important responsibilities, the new ones, and many others we have long held. I deeply appreciate that we must be prudent stewards of the funds we are appropriated.

And we strive very hard to demonstrate how seriously we take that obligation by the work we do. At the same time, our resources are insufficient to fulfill our extensive responsibilities to investors in our markets, and cuts to the SEC's budget would seriously imperil the progress we have made and diminish our ability to fulfill our mission.

While more remains to be done, the agency's accomplishments in the last few years across the range of its vital responsibilities have both been impressive and enormously important to investors, the markets, and capital formation. For that, I want to thank, first and foremost, the exceptional staff of the SEC, as well as my fellow Commissioners, present and past.

And I want to thank the chairman, the ranking member, and this committee as a whole for your continued support which will allow the SEC to fulfill its essential mission for the American economy.

If I might, on a personal note, as the chairman has indicated, I did formally announce yesterday that I would complete my nearly 4-year tenure as Chair of the SEC at the end of this Administration in January. It has been my high honor and privilege to serve. And while I have not yet actually done my David Letterman Top 10 list of what I will miss most, I am sure my appearances before this committee will be somewhere on it.

But more seriously, as an independent head of an independent agency, it is to be expected that we have had areas of agreement and areas of disagreement. But I very much appreciate the professionalism and the courtesy of the chairman, the ranking member, and the committee generally, as we have together grappled with the challenges before the SEC that are so important to the American public.

Thank you, and I am happy to answer your questions.

[The prepared statement of Chair White can be found on page 54 of the appendix.]

Chairman HENSARLING. Thank you, Chair White.

And the Chair now yields himself 5 minutes for questions.

Chair White, as you know, significant tension has been devoted recently to liquidity concerns in our U.S. and global fixed-income markets. When you testified last year before us, I asked you about the regulatory impact on bond market liquidity.

And at the time, you testified that while, "No question, there are concerns about the liquidity in the fixed-income market," at that time, a year ago, you could not identify a culprit.

Since your testimony of a year ago, we have had some news and some evidence of the regulatory impacts on liquidity, and they have become starker. On September 27th, former Treasury Secretary Hank Paulson commented that, "The Volcker Rule solved the problem that was not a problem. We have much less liquidity in the markets. It has become much harder for financial institutions to provide liquidity."

On September 16th, Douglas Cifu, CEO of Virtu, one of the world's largest electronic market-makers, announced that his firm would no longer invest in certain bond exchange traded funds, certain ETFs because the underlying securities had become too hard to trade, thereby eliminating sources of liquidity as banks continued to reduce their roles as market-makers.

On October 7th, the value of the British pound plummeted from $1.26 to $1.18 in a matter of minutes. During trading in Asia, with some electronic platforms recording trades as low as $1.15, The Wall Street Journal attributed this extreme volatility in part to a lack of currency traders in the foreign exchange markets.

So since your last appearance, Chair White, have you been able to determine whether regulations, such as the Volcker Rule and Basel III capital and liquidity requirements, are a contributing cause of the continuing decrease in liquidity in the fixed-income markets, particularly the corporate bond market?

Ms. WHITE. The short answer to that is no, but we continue to study it very, very carefully, really effectively globally. And the SEC, as well, as you know, economists at the SEC from our Division of Economic and Risk Analysis are charged by Congress with actually studying and reporting to Congress on the impact of regulation generally on market liquidity. I think that report is actually due in May of 2017. But I know—

Chairman HENSARLING. Well, Chair White, does the recent data concern you? Because it has been a year, and it is disappointing that there still are not conclusions.

Ms. WHITE. The data does concern me. I think I said that at my last testimony, as well. And the issue, the overall issue also deeply concerns me. And it is something I will say that I go back quite frequently to our staff to try to drill down on what we are reporting to Congress, this committee, in particular, each quarter is on corporate bond liquidity, primary market, as well as secondary liquidity levels in the bond markets. And that essentially, although some decrease obviously in dealer inventories, but by most measures, there has not been a deterioration. I will say—

Chairman HENSARLING. I think you are aware, Chair White, that many economists believe that, frankly, the next financial crisis very well could be triggered by this bond market illiquidity phenomenon.

So as you are soon to depart your stewardship and chairmanship of the SEC, I would simply request that resources be focused on this. Now, during your appearance before the committee in March of 2015, I asked you and other Members of the Financial Stability Oversight Council (FSOC) to conduct an analysis to see what systemic risk could be posed by this diminution, a significant diminution of liquidity in our bond markets.

Since that time, has the SEC or FSOC, of which you are a voting Member, conducted any analysis of the systemic risk that could result from a lack of liquidity in the corporate bond market?

Ms. WHITE. Clearly, we are studying at the SEC—I have mentioned our economists, as well as others on our staff. In terms of FSOC, again, there have been working groups on the staff of FSOC looking at that. But there is no definitive conclusion there. I know some work is going on in different working groups there.

Chairman HENSARLING. Again, I would commend to you this is an area that is deserving of laser-like focus, and I hope the appropriate resources will be devoted. Again, it has been at least over a year since these concerns have been brought to your attention and the attention of FSOC.

One last question. During the adopting phase of the Volcker Rule, five regulatory agencies had the ability to interpret, examine, and enforce compliance with it. That has led to overlapping and conflicting guidelines.

To what extent are the five adopting regulatory agencies trying to coordinate efforts concerning the Volcker Rule?

Ms. WHITE. We still have our working group that we have talked about before that meets quite frequently both on interpretations and also coordinating enforcement. As you know, that is a sign to the different agencies. So we are working very, very hard to try to coordinate and be as consistent as we can possibly be.

Chairman HENSARLING. The time of the chairman has expired. I yield to the ranking member for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman. I would like unanimous consent to enter into the record a story from The Washington Post from August 10th of 2016.

Chairman HENSARLING. Without objection, it is so ordered.

Ms. WATERS. This story, for those of you who are unfamiliar with it, recounts a legal deposition, from late 2007. Donald Trump has sued a New York Times reporter for defamation, alleging that the reporter lied in his book about Trump's net worth and his general lack of success in business, something we know that Trump is very sensitive about.

Now, because Trump sued the reporter, it allowed the reporter's lawyers to get access to Trump's business documents. As the Post story documents, through the defamation trial of this reporter, it became clear that it was Trump who was guilty of the lying.

In fact, the reporter's lawyers caught him in lies 30 separate times. He lied about sales levels in his condo buildings. He lied about how much it costs to join his golf clubs. He lied about his amount of debt. He lied about his number of employees. He lied about how much he was paid to give a speech at the Learning Annex overstating the payment by 1½ times.

He lied about borrowing money from his rich dad, and he tried to pin the blame for some of the lies on a co-author of one of his books. He lied about facts that were simple to disprove, things easily verifiable by searching documents and public records.

Now, this lawsuit that Trump leveled against the reporter was thrown out by the judge and was denied an appeal, so there was justice in this case. But this man is now, unfortunately, our President-elect. And I expect him to continue with these distortions.

Only now our Nation is at stake. And when he is this thin-skinned bully, I hope he doesn't lash out on the freedom of the press or on peaceful protesters. But we stand ready to protect our sacred American freedoms and will hold him accountable starting with this committee.

Chair White, I bring all of this up because you were the lawyer in the 2007 case who had deposed Mr. Trump and exposed all of these lies. This deposition I mentioned is part of the public record. So is the Washington Post story true? Did Mr. Trump really systemically misstate, invent, and lie about business information? And was this lawsuit ultimately thrown out by the judge on the case?

Ms. WHITE. I don't think it would be appropriate—you are correct, Ranking Member Waters, that I participated in the defense of that reporter who wrote the book that you mentioned. I actually argued the appeal myself. And the reporter prevailed in that case. I don't think it would be appropriate to comment on specific statements during the litigation.

Ms. WATERS. Okay, so I just wanted to confirm and place in the record that this case did take place and that you were part of the deposition. So now you know firsthand, we all know firsthand the character of the man who is going to be our next President.

Mr. Chairman, now I understand why Chair White is stepping down. Oh, he left. I can't tell him. I yield back the balance of my time, Mr. Garrett.

Mr. GARRETT [presiding]. The gentlelady yields back. Thank you. I recognize myself now for 5 minutes.

So, Chair White, you and I have both talked, but we also had correspondence go back and forth about the SEC's implementation of the FAST Act, which was to simplify and modernize the disclosure requirements under Regulation S-K. And as you know, there were a couple of deadlines for the SEC to meet under the FAST Act. So the first was to propose simple rules to eliminate outdates disclosure, right, which you have done, thank you.

And the second deadline, which is due next month for November and December, is for the SEC to issue a report to Congress on further ideas to modernize disclosure. So in going through the testimony today, on page 12 of your testimony you say, "Staff has also completed a study and report on how to further modernize and simplify Regulation S-K as mandated under Section"—and so forth, of the FAST Act.

Can you just apprise us of what report that you are referring to and what report are you referencing? And I say that because to the best of my knowledge, I have not received, and our staff has not received a report or a study on that.

Ms. WHITE. I noticed the same reference in the testimony but there isn't a footnote cited to it. I believe that reference is to the report that is due November 28th to Congress. And the staff has completed certainly a draft of that report that is with our Commission now for review. It is a staff report, but as is customary under our procedures for most staff reports that are provided to the Commission before they are provided to Congress.

Mr. GARRETT. Okay. So my next question, I guess, is the easy follow-up then. Is this—so the deadline I didn't—is established in the FAST Act of December—

Ms. WHITE. I think November 28th, I believe—

Mr. GARRETT. Yes. As far as you are concerned, that is going to be met and so will be—

Ms. WHITE. I certainly believe so, yes.

Mr. GARRETT. Before you leave here for good, Congress will have that report?

Ms. WHITE. I hope long before I leave here. I hope it is to you on November 28th.

Mr. GARRETT. Okay, fine.

Moving on, the SEC, as you know, has the Equity Market Structure Advisory Committee. That term for that committee which has been around for—for a while now, right—is slated to end in January of 2017, so next year.

So next question is, do you anticipate renewing that committee for another term or is that something that you are leaving to your successor to handle to renew?

Ms. WHITE. I certainly think it should be renewed. I think it has been very, very useful, and I think it will be useful going forward.

Mr. GARRETT. Right.

Ms. WHITE. I will be discussing it with my Commissioners. I think it is maybe a February 2017 date. But in order to renew the charter, we need to deal with it now, so I will be discussing that with my Commissioners.

Mr. GARRETT. Okay, so for all intents and purposes, from where you sit, yes, go forward with it?

Ms. WHITE. It certainly—in my view, it certainly should go forward.

Mr. GARRETT. All right. And when it is done, are there other industry representatives who are not there now who should be, such as retail brokerage or anybody else?

Ms. WHITE. There has been a lot of discussion about the composition—the initial composition, I think there are 17 members was actually approved by the full Commission, when it was a full Commission, actually, five members. And so you know, obviously, our goal was to get balance and representation but clearly, there are—retail brokerage is one area where I think—it is represented there by virtue of knowledge of members who are on the committee, but it is one area where I think we have all sort of identified as maybe the one place we would like to identify an actual member of the committee.

Mr. GARRETT. Yes.

Ms. WHITE. And then I think we have also had requests from various other folks—NASDAQ, the New York Stock Exchange—to be members. That is also up to the full Commission.

Mr. GARRETT. Okay. And so that is something you are going to throw out before you leave, as far as just—

Ms. WHITE. I think we have the issue before us of the renewal of the committee. Separate from that is the membership. It is possible we would proceed by extending it and then figuring out the membership in short order.

Mr. GARRETT. Okay, moving on. The SEC—other topic—Rule NMS, the SEC publishes list of rules that were reviewed pursuant to the Regulatory Flexibility Act, which included Reg NMS.

As such, do you believe that the SEC should continue to examine the impact of that rule on the equity markets—which is what I look at all the time—and the behavior of individual market participants, as you indicated several years ago, back in 2004, your speech on this topic and—yes?

Ms. WHITE. I absolutely do, and I believe we are.

Mr. GARRETT. In what sense?

Ms. WHITE. As part of the—I sort of talk about our equity market structure review, and we have certain proposals out there on specific areas where we think we should act now. And then, we have a comprehensive review of what I would call the more fundamental structural issues. Reg NMS is clearly front and center in that more comprehensive review. Our MSAC committee is working on that.

Mr. GARRETT. Yes. My time has expired; I have much more as far as what I was talking about in my opening statements as far as capital formation not being done, but again, thank you for your service.

Ms. WHITE. Thank you very much.

Mr. GARRETT. The gentlelady from New York is now recognized for 5 minutes.

Mrs. MALONEY. Thank you very much, Mr. Chairman.

And Chair White, thank you for your public service. You have been a trailblazer and a role model to many young boys and girls. New Yorkers are very proud of your service to New York and to the country, and we thank you so much for your leadership and really, ground-breaking stellar career in so many different areas.

My question to you is about a statement you made last month when you gave a speech on the regulatory regime for the U.S. Treasury market. You noted that under the Government Securities Act, firms that act as dealers in Treasury securities are required to register with the SEC as government securities dealers.

But you also noted that the regulators' joint report on Treasury market volatility had found that the most active dealers in the interdealer Treasury market were high frequency traders, principal trading firms, many of which are not registered with the SEC as government securities dealers.

You stated, "There is significant concern that this activity indicates that certain principal trading firms are acting as dealers, but without the appropriate registration and regulation that is designed to protect investors and the markets."

So my basic question is, why has this been allowed to go on for so long? You, yourself, admitted that some of these principal trading firms for you are "clearly engaged in dealer activity" without being registered as dealers.

If that is true, why hasn't the SEC brought in any enforcement actions against firms that are acting as unregistered dealers?

Ms. WHITE. I think I indicated that the data from which I drew those observations came out of that joint interagency study of events of October 15, 2014, and raised questions about whether some of those firms shouldn't be registered.

I believe I also mentioned in that speech—I know I have elsewhere—that the staff is working on whether there needs to be public guidance issued as to where the line between dealers and traders is to take account of that phenomenon. It is sort of interesting, the Treasury markets, I think what is happening there is terrific, frankly, because you have great cooperation among the various agencies, including Treasury, banking regulators, the SEC, and the CFTC, working together.

We each have certain spheres of authority of the Treasury markets, and I also indicated in that speech that I thought we ought to apply some of the SEC's authority to create greater transparency and, frankly, other protective measures in the Treasury markets, as well as the equity markets.

Mrs. MALONEY. Okay, thank you.

My second question is about the statements you have made several times over the past years. You have suggested that the SEC should rethink its 2009 diversity disclosure requirements to provide more useful information on the diversity of boards and their nominees.

And you directed your staff to review the existing disclosures. At my request, the GAO reviewed these requirements and found that the information provided by companies is inadequate and unhelpful to investors. And I am wondering if your staff reached the same conclusion.

And because of repeated studies that indicate more diverse leadership helps companies avoid so-called group-think and make better, strategic decisions many investors want access to data on board diversity as they make investment decisions or exercise their voting rights.

Leading institutional investors petitioned the Commission in March of 2015 to revise the diversity disclosure. They suggested that a simple matrix could make the disclosure simpler for investors, issuers, while providing investors with actionable data.

So do you think—where does this stand does and where are you? I do want to say that in this GAO report, it showed that women were 16 percent of boards, and if they upped their activity significantly, it would be 2040 before there was any gender balance.

The GAO report also provided research from private firms that showed when there was gender diversity, the bottom line was better for investors. And my office has received requests from institutional investors, major, major investors, on getting more accurate information on gender diversity.

I even went so far as to put in a bill that merely added another line that said just disclose how many women are on your board. It would not be in any way burdensome to industry. It is just another check or another number that would be added.

And this is information that investors—significant stakeholders and investors—are asking for. They are asking for this information. So I wonder where this stands with the activities—

Mr. GARRETT. The gentlelady's time has expired, but if you would like to answer that, Chair White?

Ms. WHITE. I will be very brief. As you know, I am a very strong proponent of diversity on boards, and I am aware of the studies you indicate, which I think are quite telling. Where that stands, as the staff has studied it, and they are preparing a recommendation to give to the Commission. It is pretty far along in that in terms of trying to provide more meaningful disclosure along the lines you indicate.

Mrs. MALONEY. Do you think you will receive this before you—

Ms. WHITE. I do not. Unfortunately, I do not. Will they receive it before? They may well receive it before. I don't think there will be a proposal before I leave.

Mrs. MALONEY. Okay, thank you.

Mr. GARRETT. The gentlelady's time has expired. Thank you for your answer.

The gentleman from Texas is recognized for 5 minutes.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Chair White, you and I are kind of in the same situation. This is probably my last hearing with you, and I want to thank you for your service.

Yesterday, the SEC held its first-ever FinTech Forum, which included panels on recent innovations and investment advisory services, trading, settlements, and clearance, and investor protection, and capital formation. So after this forum, what is the next step for the SEC in the FinTech space?

Ms. WHITE. First off, it was a very, very useful forum. We have been quite active in that space in terms of doing significant outreach. Some issues are sort of on our plate right now; some are for the future.

I formed earlier this year, in effect, a FinTech Working Group that I have directed to make quite targeted recommendations, quite specific recommendations to the Commission on what the next step should be at the SEC, both in terms to some degree of regulations that we have now that may apply to certain FinTech activity, how we can appropriately foster innovation, but also obviously, protect investors in the space.

The three topics we really discussed yesterday and the ones we have been most focused on, obviously, the distributed ledger technology generally and the settlement and clearing space, the so-called robo-advisers—that is not the name they would like to apply to that, but how automated providers of advice—and it is not only automated often—can comply with their duties, fiduciary duties on the Investor Advisers Act and Investment Company Act.

And then marketplace lending, those are the three big areas that we are focused on, although our folks in the Division of Corporation Finance have also been reviewing and passing on companies that, for example, would actually issue digitized securities.

So we essentially will receive those recommendations, I don't think imminently, but I think in the next few months, and then decide what we need to do next in terms of concept releases, rulemakings, or just giving more clarity to entrepreneurs as to the spaces that they may be in and need to comply with.

Mr. NEUGEBAUER. So this working group that you have formed, will the recommendations that were—that you heard yesterday, will it be their responsibility to respond to and to—

Ms. WHITE. Certainly what we heard at the forum will be part of the analysis, part of the input of the analysis that they are doing. The recommendations will come from that working group to the Commission. They are doing much broader outreach than just what we heard at the forum. But it was enormously useful input for that set of recommendations that I expect to receive.

Mr. NEUGEBAUER. And in your response to my question, one of the things that I think is a common theme that I think concerns a lot of us about what is going on with the SEC is you mentioned regulations, I think, 2 or 3 times when I mentioned the FinTech space. And I think one of the things that we are also looking for is facilitation from the SEC on how do we make these markets better and not how we immediately—the first thought that we have is how do we want to regulate these folks.

And so what I would hope is that the forum was a positive step. What I would hope is that if you are going to put together—or your successor—put together working groups, it might be kind of handy to have people who are in the industry, a part of that and spend some time focusing on how we facilitate this, because as you know there are some exciting things going on in that space and actually some things going on that could revolutionize the way that we do some of these functions.

Ms. WHITE. And I essentially, agree with that. And I really said that yesterday, I did some opening remarks, that you don't necessarily jump to regulation.

We did put out also a concept release at the end of last year, request for comment on the transfer agent space for example, and asked questions just like that. So it is a matter of, there are some exciting things going on out there that really will improve the markets, improve things for investors.

We certainly don't want to be thwarting those, but obviously, we have to make certain that investors are protected in that space. The market lending space for example, to make sure that, if in fact there are investors that are providing that money through offerings, that they are being given the information they need to have.

So I think it is a mixture of things, but certainly not with a mindset of we have to regulate, regulate, regulate. There may be some rules we need to do, there may be some clarifying we need to do, but we certainly have the encouraging innovation lens that we are applying to that, as well.

Mr. NEUGEBAUER. Since most of these are non-depository institutions, should the SEC be the primary point from a regulatory perspective for these companies?

Ms. WHITE. I think they range, in terms of the nature of the institutions that are involved. But I certainly think we should be taking a primary role, yes.

Mr. NEUGEBAUER. Thank you, my time has expired.

Mr. GARRETT. The gentleman's time has expired.

The gentleman from Massachusetts is recognized. Welcome back.

Mr. LYNCH. Thank you, Mr. Chairman, and Ranking Member Waters. It is much appreciated.

Madam Chair, congratulations. Sorry to see you departing. But thank you for your service to your country. I think you did a remarkable job under the circumstances, and I have a feeling that as far as your critics on this side of the aisle go, I think they will miss you very shortly. I think we can all expect that.

I know you are wrapping up, but on market structure, I had proposed a Maker-Taker Conflict of Interest Reform Act of 2015 last year. And I know there was a competing proposal among your—you have an equity market structure advisory committee—they had a little different wrinkle on it. It didn't go as far as what I had proposed. But it talked about lowering access fees, which is a good thing. But I don't think it really got at the issue of the routing, the conflict of interest in routing certain trades.

Going forward, as you wrap up, is there anything percolating that might actually come to fruition in your closing months?

Ms. WHITE. I don't know if it will come to fruition quite in my closing months, although we are really in response—not just in response—but including in response to that recommendation that you referenced, which really is to do a pretty comprehensive pilot. It may not do everything.

We also have an outstanding proposal on more transparency in order routing too, which I think is a very important proposal that is out there. The staff is working very hard on it to—it will be the staff's recommendation to the Commission as to the next step to take.

And clearly, we take very seriously and we think—I think it is a good proposal that we have gotten from our Equity Market Structure Committee. But obviously, we will be studying that as to whether to do it in the first instance, although I think you have a lot of support for doing such a pilot in that space. And then what precisely the component should be. I can't tell you that something will come out before I leave, but we are still driving it.

Mr. LYNCH. Okay. And the question of resources, over the past while, at least over the last 6 or 8 years, we have had a defunding or a lack of resources for your agency. Can you speak to that a little bit about just the practical impact of that defunding, and as the cop on the beat for our financial markets, and also, morale-wise in terms of trying to retain the best and brightest people at the SEC?

Ms. WHITE. Just to go to the latter point first, it is so important that we are able to retain the best people and attract the best people with the expertise that you need to protect investors and to be that strong cop.

I have said this before. The biggest challenge I have had as Chair of the SEC—and there is no lack of challenges as the Chair of the SEC—is just how significantly under-resourced we are. And I appreciate we have gotten budget increases but look at what our responsibilities are, how extensive they are, how complex they are, how much they have been added to, look at the volume in the equity markets.

Look at—for example, I think 10 years ago we had 17 examiners for every trillion dollars of assets under management by registered investment advisers. We have eight now.

And I talk mostly in terms because it is so stark of our investment—our responsibility to examine investment advisors. And I have done everything I can and I appreciate the support we have gotten when we get funding to really increase the number of examiners smartly in that space, and I have done that. I have actually increased the staffing in that area of our OCIE program—National Exam Program—by 20 percent, between transferring some from the broker-dealer side where we have FINRA that is also operative, and some of the funding that we have been given.

But we are still in the position, we are smarter, we use risk analytics. But we examine 11 percent of those 12,500 registered advisors every year, 35 percent of the assets under management, on the broker side, where we have FINRA, it is about 50 percent. And so it is a big, big investor protection issue. Of course it affects morale, because you have some of the brightest, most dedicated staff in the world at the SEC. And their lone star mission is to protect investors.

And when you can't examine those advisors who are dealing with those investors and have a duty to those investors to act in their best interests, you are not able to do the job that you are assigned to do by Congress and so much want to do in order to fulfill our mission.

Mr. LYNCH. Thank you again. My time has expired. I just want to thank you again for your service to your country, thank you.

Ms. WHITE. Thank you.

Mr. GARRETT. Thank you. The gentleman's time has expired.

I recognize the gentleman from Missouri, Mr. Luetkemeyer.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Chair White, thank you. I want to add my kudos to those of my colleagues for your service and your responsiveness to this committee; it is very, very much appreciated. So we wish you well in whatever endeavors you may pursue from here on out.

I just have a comment first, and I want to ask for you to comment on it, if you would. I understand that you have announced your departure, but you are still the SEC Chair, and I want to raise one issue in hopes that you will give it some thought. It is on credit agencies. I know the SEC has taken steps to address the entrenchment of incumbent rating agencies, but I think more needs to be done. We should facilitate broader competition amongst credit agencies and encourage those acting on behalf of U.S. investors to do the same.

I know Senators Scott and Franken, among others, have raised this issue with you. And the SEC's own work has shown that this lack of competition has the potential to harm investors. It is your job to protect investors, and I hope you will give this issue all due consideration.

I am certainly going to be in touch with your successor and with SEC staff on this issue as we go down the line. I realize that is a general statement, but if you would like to comment on it, I would certainly offer you that opportunity.

Ms. WHITE. Just briefly, clearly that is an area on which we continue to focus. We have done a number of reforms in the credit rating agency space that I think are very important to have done, in terms of governance and transparency, and conflicts of interests.

We have seen some improvement in competition, but it is still a major issue. It is a very difficult one to come upon an optimal solution for, I think, in both a cost-effective way, but also in a way that actually deals with the issue that you are trying to correct.

But it is something that our economists continue to study, as well as our policy staff divisions.

Mr. LUETKEMEYER. I don't know if you watched the movie, "The Big Short," but it was very graphic on how the problems were created, and what was going on. And obviously, this is a point that we need to shore up with regards to allowing investors to have confidence in our bonds and the ratings of those. So certainly, I appreciate your consideration.

The chairman, a while ago, also mentioned something about pending rules. I guess my question would be, do you have any request for the Administration or does the SEC have any ideas of—any midnight rules that you are getting ready to propose that we need to be watchful for or that are going to come in the backdoor here that we need to be thinking about?

Ms. WHITE. Effectively, I set out our agenda for 2016 in February of 2016 at the conference called SEC Speaks, which is where the Chair usually talks about the agenda. We have advanced a number of those priorities already. I said we would do as many of them as we could, and we have also—we have talked—we have basically set the agenda for the rest of the year, and into January—

Mr. LUETKEMEYER. And you don't see a divergence?

Ms. WHITE. I don't see any last minute rushes to—I do intend to carry out the agenda I outlined in February of 2016 as much as I can.

Mr. LUETKEMEYER. Okay. In the Bloomberg report this morning, there is a report—its headline says, "U.S. Consumers are Increasingly Defaulting on Loans Made Online." And the story talks about how delinquencies and defaults are reaching key levels known as triggers for at least four different sets of bonds. Reaching those levels has forced lenders or underwriters to start paying down bonds early. I guess my first question is, are you aware of this with regards to the online lending—loans that secure these bonds and are having some problems?

Ms. WHITE. I am certainly aware of the reports of those issues. Obviously, our space is the investors in the space, not the lenders, but obviously they become relevant in terms of what are those assets underlying the investment.

Mr. LUETKEMEYER. I would say they become very relevant, very quickly.

Ms. WHITE. Very relevant, I agree, I didn't mean to minimize it at all.

[laughter]

Mr. LUETKEMEYER. In the article, it talks about how breaching these levels can force a company to divert cash flows from assets to paying off bonds instead of making new loans, which often means it has to find new, more expensive funding in order to scale back its business.

They are going to force some of these bond folks to change their business model. And to me, that it is very concerning. Are you considering any actions to prop this up or to investigate further, or are you just kind of watching from the sidelines?

Ms. WHITE. We are continually studying this space to the extent it really impacts what we are doing and the offerings made in effect to raise the money to provide the funds to lend. Disclosures of—

Mr. LUETKEMEYER. What kind of notices or disclosures are required by these bonds when these things trigger? Do they have to send these notes out to the investors, or—

Ms. WHITE. Yes, when they are offerings, they do have to make various disclosures. Sometimes they are public offerings, and sometimes they are private offerings. But you have to make material disclosures to investors.

And I think I mentioned that yesterday actually at the FinTech Forum. That is very, very important information, to talk about the underlying loans in a very accurate way.

Mr. LUETKEMEYER. I am sure you are monitoring this if that is the case, so where do you see this going? Do you see this as a blip on the screen or is this a bubble getting ready to burst? Or do you see this as a trend? What do you see?

Ms. WHITE. I think, without putting sort of an umbrella characterization on it, we have seen an increase in those concerns in the last year. Now, that may be because more information is available on it now. But it is something we are watching very, very closely.

Mr. LUETKEMEYER. Thank you.

Thank you, Mr. Chairman.

Mr. GARRETT. The gentlelady from New York is now recognized for 5 minutes.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chair White, I want to congratulate you for finalizing the mutual funds data reporting rule. That rule will give the SEC an important window into the fund industry while at the same time preserving the ability of the industry to manage portfolios in a manner that serves clients without prescriptive constraints.

Given the vast amount of new information that the Commission will be receiving, what special resources is the SEC committing to protect the data from cyber criminals who will want this proprietary investing information?

Ms. WHITE. I think it has been in our budget request for certainly, the last—the years since I have been here because I have really prioritized our data security obligations, both with respect to the new information we are going to be receiving there, and the existing information we have. It is also relevant in what we are doing this afternoon with respect to the consolidated audit trail. So we are devoting significant resources there. Our budget request for 2017, and when it is finalized for 2018, you will see resource requests specifically for that purpose.

Ms. VELAZQUEZ. Thank you. Yesterday, Commissioner Piwowar said the SEC should take the lead on FinTech regulation. Last year, I sent you a letter expressing my concern about regulatory uncertainty in this area and to better understand the needs of your agency now and in the future.

I know you are stepping down soon. Do you have any final thoughts on this rapidly growing industry and the role you envision the SEC playing in the next few years?

Ms. WHITE. I agree with Commissioner Piwowar that the SEC, in its spaces that FinTech touches—and there are a lot of them—should certainly take the lead and be proactive. I think we have been.

Some spaces and I think—if I remember, your letter addressed at least in part, market-lending platforms. We are, uniquely among the regulators that are actually involved in those sets of issues, focused on the investors as I just mentioned, if in fact that is how the funds are raised to lend.

Where we don't act is really in terms of the lending standards or the actual loans that are made. But I see the SEC playing a major, major role going forward in all the FinTech spaces that we have any jurisdiction over.

Ms. VELAZQUEZ. I am glad to hear that, thank you.

You and your fellow regulators have spent years crafting the Volcker Rule to balance the needs of market-makers and underwriters with the mandate to eliminate proprietary trading with federally-insured funds. What happens if the Volcker Rule is eliminated and banking entities that have access to the Federal safety net are once again allowed to make risky proprietary trades?

Ms. WHITE. I guess I would maybe answer that a little more broadly, that I think the reforms that are contained in the Dodd-Frank Act have been enormously important to strengthening our financial system and for the protection of investors.

Obviously, the Volcker Rule is a significant component of that. So I think we are much stronger and more resilient than we were before the various reforms in the Dodd-Frank Act. And so, I certainly would not want to see those rescinded or repealed.

Ms. VELAZQUEZ. Thank you. And I was happy to hear about the SEC's recently adopted rule regarding interstate security offerings. This has the potential to cut red tape and help many small businesses raise capital where they live and work.

Outside of interstate offerings, are there any other areas the SEC is or should be looking at to streamline small business capital formation?

Ms. WHITE. As you know, we have fairly recently, under the JOBS Act, reformed and really expanded Regulation A+; it is a crowdfunding regulation. We have a proposal that is outstanding on what the definition should be of a small reporting company so that if there was an adoption of that, you would have more smaller companies that we are able to scale disclosure.

Our disclosure effectiveness review tees up various issues about scale disclosure for smaller businesses. We were very pleased to recently adopt the interstate amendments to our rules to make it easier for small businesses to do intrastate offerings, including in the crowd-funding space.

But it is something—we have our annual forum coming up this week, actually, and we will be talking about more avenues to try to facilitate raising capital for smaller businesses.

Ms. VELAZQUEZ. Thank you, and thank you for your service.

Ms. WHITE. Thank you very much.

Mr. GARRETT. The gentlelady's time has expired.

Mr. Huizenga is recognized for 5 minutes.

Mr. HUIZENGA. Thank you, Mr. Chairman, I appreciate that, and I too want to echo the sentiments of my colleagues, and thank you for your service and your efforts in here. And I think you have tried to come in and be as honest and forthright as you possibly can within the constraints of what we are dealing with.

I am concerned about something that has been brought up by the much-cited Commissioner Piwowar, concerning activism really overwriting market soundness and in some cases common sense about how we regulate and make sure that good business decisions and regulatory decisions are behind them.

We have tons of examples, but pay ratio and conflict minerals, political spending disclosures, he talked about that, so how do you guard against that in these closing days, is really I guess kind of my question?

Ms. WHITE. There are several things you have grouped in there. A couple of them are congressional mandates. And I have talked about that before when I have testified.

I do regard my job as the Chair in part to carry out congressional mandates—they are passed by Congress, but we carry them out. It is our obligation to, and we try to do it in the most cost-effective way we can, as consistent with our mission as we can, but they really come from Congress. And then there are various things—

Mr. HUIZENGA. How about those things that don't come from Congress?

Ms. WHITE. Yes, and I was about to say, there are various things we don't do also, because of the concerns that you mentioned. I think it is—and as far as I am concerned, since I have been Chair, we know what our mission is. I make a judgment myself, as to what is the right thing to do. We obviously take input from all constituencies about that, but then ultimately make that decision based on our mission: protecting investors; the markets; and capital formation.

Mr. HUIZENGA. Very specifically I guess, then, there are two Commission seats currently open. Blaine Luetkemeyer, my colleague, had started kind of going down this road and I guess I would like to get as definitive of an answer—I would like to get a definitive answer. I will stop, period, on that.

But there were reports that regulators are trying to "rush to finalize the incentive compensation rule" prior to President-elect Trump taking office. Will you commit to us, here, that you will stay any Commission vote on that rule until after the inauguration? Because this is a multi—

Ms. WHITE. Yes, I understand. It is a multi-agency, it is—and basically, I think the repurpose was issued by the agencies in May of this past year. The staffs are clearly working through the comments on that; it is not a new issue. So, I can't commit, as I said here, what the timing will be on that other than to say that—

Mr. HUIZENGA. Regardless of time—

Ms. WHITE. But I hear what you are saying.

Mr. HUIZENGA. Yes, regardless of the timing, they may or may not have it done. The reports are they are rushing to try to get it done, and what I am asking for, I guess, is the commitment from you that you will then not vote on this or not allow a vote on this from the SEC to implement that before there is a new President.

Ms. WHITE. I would say two things, and I will be very straight, and as clear as I can on this. I don't think any rulemaking benefits from it being rushed. It is hard to do it right, it is hard to do it optimally, and I have really tried, even in joint rulemakings, to make sure that our economic analysis comes into play and our expertise comes into play, and I certainly will commit to do that. But I think I can't judge in a vacuum the next 2½ months.

And I don't mean to—but as I sit here today, that is the commitment I can give.

Mr. HUIZENGA. So if you were satisfied—we have another minute and 15 seconds, so we can keep going back and forth, me asking and you avoiding it, but—so if you are saying, if you are satisfied that they have gone through and properly vetted this, then you would have no problem moving ahead with that, or—

Ms. WHITE. Again, I don't know what is going to be in it. I want to be satisfied—

Mr. HUIZENGA. They don't know, either. That is why we are trying to understand—

Ms. WHITE. No, no, no, but "they" is "us," too, "they" is "me," too, in the sense that I have to put it on the agenda to vote. And obviously, what is always an issue there is the content of the rule, obviously, in terms to be satisfied with it, that I think it ought to go to the Commission—

Mr. HUIZENGA. It is both content and context, correct? As long as there is the content—

Ms. WHITE. No, let me say it this way. I understand completely the sensitivity that you are raising, in terms of the time period that we are in. I will say that this is something that has clearly been sort of proceeding apace all year. It is not something that is all of a sudden proceeding apace. But I am absolutely sensitive to what you are raising.

Mr. HUIZENGA. Okay, so—

Ms. WHITE. That is as far as I can go.

Mr. HUIZENGA. —in 15 seconds, you are not—are you willing to commit to not vote on this—

Ms. WHITE. No, I can't give that commitment in a vacuum. That I can't do. I think I have said all I can, but I would hope—I think I have said all I can say.

Mr. HUIZENGA. And I guess I would like to hopefully emphasize, your view that rushing into these things is a bad path to go.

Ms. WHITE. I think rushing into anything is, but certainly I take your point on that.

Mr. HUIZENGA. Okay. With that, I gave it a shot.

All right, thanks, Mr. Chairman, I yield back.

Mr. GARRETT. Okay, so we are going to rush over to the other side, then.

Mr. Scott, you are now recognized.

Mr. SCOTT. All right, thank you very much, Mr. Chairman.

Chair White, I want you to know that I think that you have been one of the very best Chairs of the Securities and Exchange Commission in the whole history of the SEC. And we all want to thank you for your service; you are so smart, and so tough.

And many people don't know, but as a former prosecutor you showed that toughness when you took on John Gotti, the big mafia boss, and brought him down. And you showed that toughness when you dealt with the terrorists that attacked and bombed our World Trade Center in New York.

And that same toughness you brought to the SEC, as you really stood up and supported Dodd-Frank as our main instrument to prevent any future taxpayer bailouts of the financial sector. So I say congratulations on a job well done.

Let me just ask you something. About 6 weeks ago, this committee had a hearing about Wells Fargo and the scandal. Now, it is my understanding that almost 3 years ago the SEC did an investigation regarding the aggressive cross-selling of Wells Fargo. Is that true?

Ms. WHITE. Again, I can't comment on any investigation we did or we might be doing. But I think what you are referring to, at least the reports that I have seen, and again I am just commenting on the reports that I have seen, the media reports that I have seen, refer to our Division of Corporation Finance and their comment letters. That is not our enforcement staff, it is—

Mr. SCOTT. I just wanted to get to the fact that a few years ago, perhaps as many as 3 years ago, somebody informed you about this cross-selling.

Ms. WHITE. No, again, what the SEC looks at—the actual cross-selling practices obviously is not in the SEC's jurisdiction—

Mr. SCOTT. Right.

Ms. WHITE. It is banking regulators. Disclosures are within our jurisdiction, though, and I think that is—

Mr. SCOTT. Yes.

Ms. WHITE. —where that is emanating from.

Mr. SCOTT. And now, we have a new report that the SEC is, again, investigating Wells Fargo's cross-selling practices. Is that true?

Ms. WHITE. Again, I can't comment on whether and what we are investigating. Our jurisdiction is to investigate—

Mr. SCOTT. All right, what I am trying to get at is, you are doing your job, and I certainly respect your comments on that. But I think it is very important to show that the SEC has been on the case and has been dealing with this in the best interests of the American people.

So could you just maybe tell us, tell the Financial Services Committee, how the investigation is proceeding? What can we expect? Any conclusion? Is there any input you could give us as to—

Ms. WHITE. I am afraid, again, I really cannot because we don't comment on whether we are investigating something or what we might be looking at if we are. I just can't do that in any case, yes.

Mr. SCOTT. Okay, let me go to this one. I am the ranking member on the Commodities Exchange and Derivatives Swap Subcommittee, and I have been constantly assessing the numerous rules surrounding derivatives in terms of equivalency on the world stage.

My committee handles the jurisdiction of the CFTC. And of course, you are involved in that, as well. Now, a major concern I would raise is on the equivalency issue, particularly with the European Union. I want to know what the status of that is going forward from your knowledge. And I also want to get an idea of how you feel this exit of the largest market within the European Union, Great Britain's exit from the European Union, impacts this issue of equivalency.

Ms. WHITE. First, I think, as you know, the derivatives markets are uniquely global. So obviously, that is why all the regulators internationally have been dealing with these issues.

SEC's own cross-border proposal on the securities-based swaps space is under the rubric of substituted compliance, when can we and can we not accept other jurisdictions' rule to satisfy our rules? Our staff is involved in those discussions. The CFTC has been, as you know, more involved earlier, more extensively in some of those discussions. And in terms of the U.K., that is still sorting itself out, I think.

The concern is that it needs time-wise also to be put back on track so those rules can actually work together and be effective. But I guess we are in the stage now where everybody is already focused on those priorities, but the discussions still go on.

Mr. SCOTT. Thank you very much, Mr. Chairman. And best wishes to you, Chair White.

Mr. GARRETT. I now recognize Mr. Duffy.

Mr. DUFFY. Thank you, Mr. Chairman. Chair White, welcome again for your last appearance with us as the Chair of the SEC. I want to join my colleagues—I have not been the biggest fan of the Administration, how they have complied with Congress' requests for information, how witnesses have come in and testified before this committee I think has been obstructionary at the least, but that has not been the way you have run the SEC and you have been frank and honest and cooperative.

I think you have come in and tried to answer the questions that we have asked to the best of your ability, and I think you are a standout in how you have run the SEC and how you have engaged with Congress.

I want to thank you for that. And I know that is probably at risk of making your next 2 months more challenging that we heap such great praise upon you, but I think it is a job well done. And to be clear, we don't agree on everything and that is understandable, but I think, again, you have done—

Ms. WHITE. Thank you very much.

Mr. DUFFY. —an outstanding job. I do want to drill into—and you can pick up our concern with what is going to happen in the next 2 months. And we always get concerned about the lame-duck session of a Presidency and a rush to implement a whole bunch of new rules. And I think the better practice would be to wait and let the new Administration come in. We have kind of done a little dance today as you have had questions, but what rules do you want to see finalized?

Not the SEC, I am talking about you personally. What do you want to see finalized in the next 2 months?

Ms. WHITE. I think again, I mentioned it earlier. I am not—we are not rushing, in my view, anything, so as far as that is concerned, I did set out the agenda earlier in the year, and frankly, our agenda for the rest of this year and into early January has been set for some time.

I think the—other than this afternoon which has been sunshine and publicly noticed when we will be considering—approving the final consolidated audit trail plan, I think we have publicly noticed the others that we have talked about internally in terms of scheduling.

Some that I have mentioned in terms of sort of year-end goals include the capital margins segregation rules under Title VII, something, by the way, that all of my Commissioners have firmly supported prioritizing, my current Commissioners and my prior Commissioners and myself. So, that is one that I have mentioned publicly. I mentioned, I think in my oral testimony, that we do have an outstanding derivatives proposal in the asset management space, and I have mentioned publicly before that that is a priority.

We are also looking very carefully at what the chairman mentioned in terms of 30-e3, in terms of the providing mutual fund reports electronically. That is something that when we adopted the reporting rule but for that, I said we were very focused on trying to have the staff give us a final recommendation as to what to do by year end. I think those are the ones I have mentioned publicly.

Mr. DUFFY. Okay, and I just—we have blown through most of the timelines set out in Dodd-Frank. We are 6 years on. You are now at year end basically to the statements that you made at the start of the year, that we go 6 years and then the last 6 weeks I think would not be the best practice. I would like to see you hold off as much as possible unless it is an emergency for the next Administration, but that is just my opinion.

I only have a minute-and-a-half left. Quickly, I want to thank you for your work on the Tick Size Pilot Program. We worked on that in the House. You saw what happened here with an outstanding vote in this committee and on the Floor, and you took it upon yourself to implement this pilot program and we are grateful for that. We want to give our small companies greater access to capital.

But as you have heard, some participants worry that the data will expose their trading strategies. You have heard that, as I have heard that. Can you assure the committee that you will ensure that the data that is provided will be protected? And can you give those who participate that assurance?

Ms. WHITE. The answer—I have heard those concerns raised. The staff is all over those questions that have been raised. And I think I said before in answer to another question that the security of the data that should be secured couldn't be a higher priority in every space including the Tick Size Pilot, so the staff is very focused on it.

Mr. DUFFY. Very quickly, I want to move over to shareholder proposals. Shareholders only need to own $2,000 worth of stock for 1 year to submit a shareholder proposal for inclusion in proxy materials. In addition, a shareholder proposal need only receive 3 percent of a vote cast the first time, and 6 percent and 10 percent in subsequent years respectively, to qualify for submission in the next year. This hasn't been updated for 50 years. Do you have any thoughts on whether we should be updating these proxy submission rules?

Ms. WHITE. I certainly think—and again, I think everyone knows the sort of the press of our rulemaking agenda in the last 3, 4, 5, 6 years. That has obviously been discussed for several of those years.

I think it is very important for the staff to refresh what their recommendations are in that space. I will say there are very divergent views on that, for example, that the $2,000 threshold was originally put in deliberately small, so you could allow the small shareholder to have that kind of franchise participation, but as you say, that was set some time ago, and I am also obviously aware of the issue on how many times, and what vote do you get on a proposal.

So I think you will see the SEC returning to that, not that they have left the study of that, but I don't think anything will come out during my tenure.

Mr. DUFFY. Okay, and again, my time has expired. I want to thank you again for your great work and cooperation with Congress. I yield back.

Ms. WHITE. Thank you very much.

Mr. GARRETT. The gentleman yields back. Mr. Green is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. And thank you, Chair White, for your outstanding service. It has been an honor to work with you, and my hope and my prayers are that you will be equally as successful in the next life as you have been in this one. Thank you.

Madam Chair, without being specific, if a bank creates a circumstance such that it gives the appearance of being in a growth mode by engaging in some onerous tactics, by giving the appearance that it has more customers than it actually has, you are in the business of protecting investors. You are the investor protector. If a bank is giving this false sense of growth, is this the kind of thing that the SEC concerns itself with?

Ms. WHITE. And again, talking in the abstract as you presented the question—

Mr. GREEN. Very general terms.

Ms. WHITE. No, there is no question that is very much in—the disclosures to public investors, we will phrase it that way, or the accuracy of them is very much in the SEC's space. We bring cases in our enforcement division on misleading material disclosures all the time, in a lot of those cases.

And so, what you look at—and you mentioned kind of the—was there growth or not growth, you obviously look at both quantitative materiality and you can look at qualitative materiality, so if instead of a profit, there is a loss, you may have qualitative materiality issues even if it is not a big amount. So, you certainly—you do apply those lenses at the SEC to disclosures like that.

Mr. GREEN. And when these circumstances manifest themselves, does it take a complaint from many investors or do you do this on your own motion, on your own volition?

Ms. WHITE. We very, very often do it on our own volition. Obviously, we are constantly surveilling the marketplace and the marketplace of public information. We have our own data analytics, so often we do it ourselves, often, we will get a—obviously, we have a very vibrant whistleblower program so we get information there. We get it from all sources, but in terms—we don't have to wait on a complaint to act. We are very proactive.

Mr. GREEN. And when you do this on your own volition, is it published that you are engaging in this process? Or is this something that happens and then we are accorded the results as opposed to an indication that the process has been engaged?

Ms. WHITE. If we are talking, and I think we are, about an investigation that we would be doing in our enforcement division, for example, and I think that goes back to my discussion with Congressman Scott, we do not disclose whether we are investigating something or what we are finding. And so you wouldn't see that until, if it did, resulted in an action.

Now, sometimes when we do open an investigation, the companies, if they are public companies, will disclose the fact that that investigation is ongoing. Again, that is their call based on their read of what is required, what is prudent to do. But you won't hear from us if it is an ongoing investigation until there is a result typically.

Mr. GREEN. I am going to come back to this, but I would like to go to another point, and I have time enough to do it. Do you find that there is a conflict between what your agency has as its responsibilities with the CFPB and its responsibilities?

Ms. WHITE. I have not found that during my time as Chair. Obviously, we work cooperatively with all other civil and criminal law enforcement agencies. So, could there be overlap that could—conflict is a word—try to work any conflict you have in these spaces. There is an awful lot of space to cover. Different agencies and—

Mr. GREEN. You would not recommend the elimination of the CFPB, I take it?

Ms. WHITE. Clearly, it has been a very active enforcement agency, and I think there is a need for a lot of active enforcement agencies.

Mr. GREEN. Thank you.

My final comment will be this. Wells Fargo engaged in conduct unbecoming a bank. They took advantage of people at the entry-level in their business, such that it benefited the people at the top of the business. As bad as that is, it also caused people who were making what they thought were honest investments based upon quality information, they allowed those people to make those investments to their detriment.

My hope, without getting into what you will do, is that Wells Fargo will be treated fairly and justly, and also those investors will be treated fairly and justly. Thank you very much.

Mr. GARRETT. Thank you.

Mr. Pittenger is recognized for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

And thank you, Chair White, for being with us. I must say, while we clearly have had disagreements, you have been very respectful, you have been very straightforward, and you have been professional in every manner. So I commend you for your work.

Ms. WHITE. Thank you very much.

Mr. PITTENGER. I would like to say an anecdotal reference is made to why you are leaving. Did you make the decision to leave prior to the election?

Ms. WHITE. I did. And I think in the last 50 years or so, the Chair of the SEC has left when there is an election, irrespective of which party is coming into power. I have served for almost 4 years, so it is really a normal course decision. In fact, I might have mentioned it somewhat later, but I was actually coming in here today, so I thought clarity was a good thing for coming in here today.

Mr. PITTENGER. I appreciate you saying that. There was some inference made that you left because of some individual who was elected President.

Chair White, as you may know, I led an effort earlier this year with 50 other Members of Congress relative to concerns of the sale of the Chicago Stock Exchange to a Chinese government-affiliated firm. As well, just 2 weeks ago, my staff met with SEC Commissioner Piwowar on this matter, and he expressed some of the same concerns regarding the corruption inside Chinese firms, as well as their complacency and the lack of transparency within them.

Given that China remains the number-one state sponsor of corporate espionage and intellectual property theft and market manipulation, we urge the CFIUS to conduct a rigorous review of this transaction and block it if it is felt it was necessary. Would you kindly comment on this in your opinion relative to this transaction and your concerns of whether a Chinese government-affiliated firm should buy the exchange, given that it does put a more minor role in the markets, albeit it would be a foothold into our markets?

Ms. WHITE. I think the issues that you are referencing are CFIUS issues, which is obviously not our bailiwick. We do have a process that follows that, which hasn't begun yet, so I wouldn't want to particularly comment on that or prejudge that.

Mr. PITTENGER. I understand.

Chair White, you previously noted that "in enhancing market structure, we must focus closely on the particular needs of smaller companies and their investors." What do you believe are the most significant issues that smaller public companies face in today's equity markets? For example, the reduced liquidity. You have commented on this some, but I would like you to elaborate on that.

Ms. WHITE. I think one is obviously the availability or not of secondary liquidity. I think our Tick Size Pilot is obviously designed to see whether widening the spreads may help that. I also—in the public spaces, I think we have to be very focused on are any of our regulations such that, again, they need to be there, they need to protect the markets and investors, but are they unnecessarily inhibiting companies, smaller companies from going public? That is something we are focused on all the time.

Mr. PITTENGER. Sure, thank you.

I would like to ask you, companies obtain capital through borrowing or equity financing, which we have discussed some. But do you agree that tightening of credit has made equity financing all the more important as a means of providing small companies with the capital they need to grow and to expand, create jobs?

Ms. WHITE. That seems to be what the data shows.

Mr. PITTENGER. Thank you.

I yield back.

Mr. GARRETT. The gentleman yields back. Mr. Clay is recognized for 5 minutes.

Mr. CLAY. Thank you so much, Mr. Chairman.

And thank you, Chair White, for being here. We are more than 6 years out from the passage of the Dodd-Frank Act, and far too many rulemakings have yet to be finalized, despite the ample time that has been afforded to our regulatory agency. One such rulemaking relates to Section 956 of Dodd-Frank. This section imposes upon large financial institutions the responsibility to institute clawback policies or policies that would allow the financial institution to snatch incentive-based compensation away from executives who engage in wrongdoing.

Democrats on this committee wrote to you last month asking you to both work quickly to finalize the rule, and to strengthen it. I am now hearing that this rulemaking may not be finalized anytime soon. Indeed, as it relates to the SEC, there are reports indicating that the sole Republican Commissioner of the SEC has refused to grant a quorum for a Commission vote when it comes to any rulemakings he objects to. That is right, the Commissioner reportedly won't even show up and vote "no," instead choosing to not attend the SEC meeting at all.

Is it correct that the Republican Commissioner has threatened to deny a quorum and thereby prevent a Commission vote on any particular rules, including the 956 clawback proposal?

Ms. WHITE. Every rule that I have put on the agenda we have had a quorum for. So, the Republican and Democratic, I am only three, but we have all showed up for those.

In terms of 956, the re-proposal that was in I think May of this year, which is joint but it is us—SEC as well, we moved that by seriatim, so there was no attempt to block that or not to have a quorum.

Mr. CLAY. Where is it now?

Ms. WHITE. I mentioned before and I think it has been publicly discussed by other regulators. All of the regulators, and there are either five or six of us—it is a joint regulation—are working through the comments and working on that re-proposal.

Mr. CLAY. Thank you for that.

Last month, Reuters reported that the SEC questioned Wells Fargo over aggressive cross-selling practices in late 2014. Quoting correspondence from the Commission's Division of Corporation Finance, as you know, the bank's cross-selling practices, as they related to deposit and credit accounts, as well as online banking, were eventually found to be unfair, deceptive, and abusive by the OCC, the CFPB, and the City of Los Angeles, to the tune of a combined $185 million fine. Can you tell the committee what prompted the SEC's inquiry into Wells Fargo's cross-selling practices 2 years ago?

Ms. WHITE. Again, in terms of the practices themselves, that is obviously not in our jurisdiction at the SEC. I think what you are referring to—and I had mentioned earlier—are reports of our Division of Corporation Finance as part of their annual review of financial filings of lots and lots of companies, public companies, raising certain questions about the disclosures.

But that is not—in terms of—that is not sort of the content of the cross selling practices. That is not in our jurisdiction. But I think what that is, is raising some questions about—I can't go beyond whatever is in the public record about the comments. But I think that is what that refers to.

Mr. CLAY. So that was just a routine inquiry on the part of the Division of Corporation Finance?

Ms. WHITE. Again, I can't say anything more specific than I have. But it does appear to be part of that annual review process of disclosures with just questions being raised, which is a routine part of what we do, a very important part of what we do but—

Mr. CLAY. And what was the outcome on the Division's inquiry?

Ms. WHITE. Again, as I understand it, comments may have been issued on the disclosure questions—really questions and comments. I can't tell you what the outcome was in that sense of the word.

Mr. CLAY. Okay, and earlier this month, Wells Fargo announced via a regulatory filing that the bank again was being scrutinized by the Commission related to disclosures surrounding its sales practices. How does this differ from the 2014 inquiry?

Ms. WHITE. Again, I can't—again, they made the disclosures they have. I can't comment on whether we are investigating or what we are investigating. I did point out before that obviously public company disclosures, if they are something that we not only do we review them in our annual reviews, which is what we were talking about before, but if we have some questions about them, they come under investigation. But I can't really say anything more than what the company itself has said so far. And I really can't comment further.

Mr. CLAY. Thank you for your responses. And my time is up. Thank you.

Mr. GARRETT. The gentlemen from California, Mr. Royce, is recognized.

Mr. ROYCE. Thank you, Mr. Chairman. And I thank you, Chair White. Thank you for your service. Thank you also for always making your staff and yourself available.

The focus of the SEC originally was, and I think should continue to be, the strength and resilience of our markets. And I think that is critical to economic growth and to the jobs that are created thereby.

But when it comes to capital markets lending, I have a question about the last few years and maybe some reflection that you would make, because we have had a lot of changes—major regulatory changes such as risk retention. We have had the accounting changes, we have had the prudential changes, and new capital and liquidity rule, and new disclosure regimes, and automated trading platforms. And all of this is occurring at the same time.

European regulators have raised concerns about how these new regulations fit together and that this is the crux of a question here, because specifically on his way out the door, E.U. Financial Services Chief Jonathan Hill concluded that, whereas after 2008, the greatest threat to financial stability had been the financial crisis, over time, the greater threat had become the lack of growth itself. In other words, too little risk itself—in his words—became a stability risk.

And then he went on to say that the crisis may have made the scale and the pace of regulatory change inevitable, but the various layers of regulation could have been better aligned.

That was his reflection, and I was just going to ask you yours in terms of whether you agree with that sentiment. If we step back and we reflect on the cumulative impact of all these regulations and carefully understand what this means for growth and lending before we move forward with major changes, what would your observations be on that?

Ms. WHITE. I think in terms of the impact of the—let me back up to a threshold. Obviously—

Mr. ROYCE. Yes.

Ms. WHITE. —the capital markets are—and innovation is built on taking prudent risks with factors fully disclosed. So, that is a very important driver of growth of the economy and everything that is positive. Obviously, one has to worry about—and we do—systemic risks that could destabilize the system and cause tremendous harm—

Mr. ROYCE. Right.

Ms. WHITE. —to investors.

I think in terms of the impact of regulations, I mentioned a little bit earlier that our economists at the SEC are studying—and will be reporting to Congress actually next year—the impact of—cumulative impact of regulations on capital formation as well as corporate bond liquidity. And it is something we study all the time.

When we do our rules by the way, our economists do study the economic impacts, and they do look at not just the particular four corners of one rule and what you are changing there, but you have these other nine rules out there, so when you add this one, what is going to be the cumulative effect upon all sorts of economic impacts. And it may be a benefit for investors or it may not be. But what is the cost of it? And one of the costs may be a cost to growth. So you want to be concerned about that.

Mr. ROYCE. I understand that. I think Financial Services Chief Jonathan Hill from the E.U. is just in retrospect looking at this. But at a time where, as you know, there is still more coming down the pipeline—we have discussions continuing on Basel IV, and we have the proposals on the fundamental review of the trading book.

So I assume you share sort of that overarching goal, which I think he speaks to there, that we need to balance the goals of market stability and safety and soundness with the needs of market liquidity, efficiency, and of end users, and overall economic growth.

Ms. WHITE. I think that is—at least as I view it—part of the cost-benefit analysis that we do. I think you have to think more broadly, as I said before, when you do that. And that is very much a part of it.

Mr. ROYCE. I appreciate your observations, and again your service. And thank you very much.

Ms. WHITE. Thank you very much. Thank you.

Mr. ROYCE. Thank you, Chairman.

Mr. GARRETT. Mr. Meeks is now recognized.

Mr. MEEKS. Thank you, Mr. Chairman. And thank you, Chair White. Thank you for all of the hard work that you have done, and I particularly want to thank you and I will ask a few questions later in regards to making sure that our boards become more diverse. And I want to get into few questions on that.

But first, I want to ask you this question. I think I heard my colleague Mr. Clay talk about it, and a few other members dealing with this whole Wells Fargo issue, et cetera. What concerns me about it is that—especially coming out of these elections—and I heard both Democrats and Republicans preach from north, from urban America, and rural America, they are losing faith in the honesty at times of some of our financial institutions.

Now, I know that our financial institutions are absolutely essential to our well-being and our way of life. But the common, everyday American is—the question that Mr. Royce asked—they don't get into that to the in-depth-ness that I think that you have to and what the SEC does.

But they ask me on a consistent basis, for example, how do we find out that someone is doing something wrong before it has the impact that it has had, whether it was on the employees or the consumers of Wells Fargo. So, I would like to ask you as you are outgoing, what kind of advice would you give Members of Congress or your successor on what we can do? Because even the Wells Fargo scenario, it was the—I am hearing this often. It wasn't the SEC that discovered it initially, it was the L.A. Times.

And so then it puts a question on where we go with reference to our regulatory agencies and confidence in them that they are going to in fact be there to protect the American people and to make sure that banks are honest. What would you say or how would you—

Ms. WHITE. Yes. That is a very good question again. I can't comment specifically on Wells Fargo other than to say that the cross-selling practices themselves are not—they are in another regulator's jurisdiction.

I am saying that just for clarity. But the broader issue that you are raising, which is really in part a corporate culture set of issues, it is in part a, how do we more strongly deter also misconduct in our companies and our financial institutions? That is a function of law enforcement.

I have spoken before, and I am going to speak again in a few days, about things I think we need to really be considering. One of them is enhanced penalty authority for the SEC.

But more fundamentally, I think a question we have to be focusing on is accountability at the senior executive level for things that may occur on their watch, even if they are not evolved in the misconduct. And how do you sort of infuse this "do the right thing" culture throughout a big company.

We have codes of conduct, and we have mandated those for years, which works better in some companies than others, the tone from the top in terms of what is said and even what is done may be good. I read something recently that resonated with me at least that when you want your employees to behave in a certain way, you have to really focus on what you are inspecting, not just what you are saying and what you are rewarding and what you are punishing.

And so if you end up with the incentives misaligned, don't be surprised when you get misconduct that is occurring.

In terms of earlier detection by the agencies, we are working on that all the time. One of the things I am proudest of at the SEC frankly is the use of data analytics and all of the data that is available out there to make us smarter and smarter earlier, about what may be problematic conduct.

I think that is a whole set of issues that we have to kind of think about and I think Congress too has to think outside the box about how to really raise that bar of culture and compliance.

Mr. MEEKS. That is one of the things that I get concerned about, and that is why I appreciate the diversity initiative that you have taken with the SEC. Because I think that when you have more diverse boards, you have more diverse thinking and more diverse watching at that level, because clearly that is the best way.

If you have a great board, they are not going to allow these kinds of things going on where they don't have self-interest—that would be the hope. But in this scenario—in one scenario, do you think that there is a conflict, that companies can go when you have an individual who is both the CEO and the Chair of the Board? It seems to be sometimes, there is no—the Chair of the Board can check the CEO, the CEO makes—because there is the balancing act and when you have both, it seems to me that could lend itself to something unseemly.

Ms. WHITE. Clearly, it raises all of those issues. I guess I am—I think the SEC doesn't take a substantive policy position on that. That is really a matter for the shareholders and State law. I guess

I am speaking for myself though, a bit of a one size may not fit all situation. Clearly, there are diverse—

Mr. MEEKS. But it should be something that should be considered—you look at—when you see that—that should raise a flag saying, let's ask some questions about it to see if a red flag presents itself that you know needs to be done further.

Mr. GARRETT. The gentlemen's time has expired. Mr. Hultgren is recognized for 5 minutes.

Mr. HULTGREN. Thank you, Mr. Chairman. Chair White, thank you very much. I echo much of what my colleagues have said and I do appreciate your service very much and wish you all the best.

Earlier in the hearing you answered some questions from Congressman Garrett about the work of the equity market structure advisory committee. As a follow up, can you tell me what mechanism is in place to ensure the recommendations of the advisory committee are included in policymaking in the Commission? How can we be certain that the reports are not left on the shelf to collect dust as so many are? And as you are probably aware, the Dodd-Frank Act requires the Commission to respond to recommendations made by the investor advisory committee.

Ms. WHITE. Yes—first of all, I was behind the formation of the equity market structure committee and I think—we formed it in early 2015, really bringing a lot of expertise points of view to add to, what I also—reinvigorated I think—which is a comprehensive view of the equity market structure. And so they have been enormously helpful in keeping the focus, keeping the—not that our feet really needed to be kept to the fire, but we are all sort of in this laser-focused way to sort of get to concrete changes if they need to be made.

So in terms of their recommendations, at the end of the day it is really the SEC that has to decide, not the committee. But essentially they are dealing with the issues that we are dealing with, the most serious ones that are out there, and everybody at the Commission, really, across the boards, I think there is a lot of unanimity about this, wants to get to the bottom of what enhancements should be made to one of the strongest and most resilient markets in the world. So, there is a lot of momentum to have these not sit on the shelf; that is the whole purpose of that structure.

Mr. HULTGREN. I hope that is the case. There is some concern here that—

Ms. WHITE. I understand.

Mr. HULTGREN. Moving on to another question, earlier this year Representative Meeks and I sent you a letter regarding the reimbursement of Section 31 fees by the Commission that have been overpaid by an SRO. In response, it was noted that in January 2011, the SEC issued a reimbursement to NYSE Arca when it was operating as the Pacific Exchange.

I wonder if you could explain why another exchange such as Chicago or NASDAQ is not entitled to the same treatment under the law. I know the Commission has maintained that the statute requires clarification but it is clear that the Commission has already established a precedent.

Ms. WHITE. I think the earlier situation occurred before I was here. The status is, we are still waiting on word, really, from OMB and counsel as to what we can—if we can do this without a legislative fix. In terms of what was done earlier, I can't speak to what the analysis was there but the current analysis is we are not certain we have the authority to return those fees. I would like to have the authority to return those fees.

Mr. HULTGREN. That certainly seems like a precedent. Is there—and at least here, where there is bipartisan support of—

Ms. WHITE. Understood.

Mr. HULTGREN. —the—and, again, just a fairness issue and is significant in some of these situations, not in the scheme of things but again for—

Ms. WHITE. No, absolutely. Absolutely.

Mr. HULTGREN. —these—as it is, and so—again I would appreciate your help in moving this forward and getting it done.

Moving on, on March 25, 2015, the SEC proposed amendments to rule 15b91 that would require additional firms to register with FINRA. During a speech on September 14, 2016, you stated that the rulemaking would be finalized in the near future.

While I share the Commission's goal for proper oversight of the securities market, there are concerns that the rulemaking does not adequately contemplate the impact on the option market and its existing regulatory structure. I wonder if you could provide an update on the status of the rulemaking? We are short of time for this hearing but this is something I hope we can continue to discuss.

Ms. WHITE. What the status of that is that the staff is—among the comments very carefully studying the impacts in all areas on that. It is moving along in that analysis, but there is not going to be—I don't think an imminent adoption.

Mr. HULTGREN. Okay. Earlier in this hearing, you mentioned to Congressmen Neugebauer when he had some questions in discussion with you, that you had performed a working group with the SEC to make recommendations to the Commission in regards to some FinTech issues. Can you please tell me when this working group will make recommendations to the Commission and then what questions you have tasked them with answering?

Ms. WHITE. I can't give you a precise time on that. We are still doing—we have done extensive outreach—obviously, our FinTech forum was an important part of that. But, we are still doing really, still extensive outreach encouraging for example the participants yesterday to continue to engage with us.

So, timing wise, again, I wouldn't call it imminent. And, what I have tasked them to do is really across the FinTech spaces that touch on SEC functioning to make recommendations as to—concrete recommendations as to what the Commission needs to do. Whether it is rulemaking—and I start there, but that is not kind of the primary focus, if that is the answer that is the answer on the recommendation.

So we need to clarify to entrepreneurs what they need to do, having in mind the lens of—this innovation could really help the markets and investors and we want to be encouraging of that, obviously balancing the investor protection. So we could have concept releases, we could have interpretations being made, staff guidance being issued, conceivably a recommendation for rulemaking, conceivably just messaging more clearly to entrepreneurs what the existing requirements are.

At the end of the day we could end up saying we think our existing system of regulation is adequate at least in part to these issues, and so very exciting space, lots of potential, and I think we are doing it the right way.

Mr. HULTGREN. My time has expired, and again thanks for your service. I would echo Congressman Neugebauer, and I do think any future policy-making from the Commission certainly would benefit from industry input, especially in the FinTech area. With that, I yield back. Thank you, Mr. Chairman.

Mr. GARRETT. The gentleman yields back. The gentleman from California is now recognized for 5 minutes.

Mr. SHERMAN. Mr. Chairman, I have one request, and that is, when we put up the $19.8 trillion graphic, we add below it, plus $1 trillion for President-elect Trump's infrastructure program. Madam Chair, on my request, I have one view. I recognize your hard work. I can recognize you crossing off the days until an extended and well-earned vacation.

The tradition is for the SEC Chair, as I understand it, to resign when the new President takes over. But that tradition was developed at a time when we had a more efficient Senate and a more efficient Congress in general that could quickly confirm your successor, and that tradition was developed before the Chair sat on FSOC, which should not have an empty seat. So you now have two very important seats, one at FSOC, and one at the Commission, and I would urge you to consider staying on until your successor is confirmed. I will just ask you to think about it.

Turning to more immediate or rather more mundane business, you still have proposed rule 38e-3. The only folks in the financial services industry who can't provide information electronically are the mutual funds. They promised me that if you pass this rule you will save 2 million trees every year. On behalf of those trees, can you move the rule?

Ms. WHITE. I had indicated earlier—although, obviously I have been talking about the agenda with both of my fellow Commissioners as I always do, but that is one of the areas where I had indicated that we would hope to get a recommendation by year-end on that, so—

Mr. SHERMAN. Please inform me electronically of what you are able to do.

Ms. WHITE. Okay, I shall.

Mr. SHERMAN. Okay, as to small business investment companies, the House Appropriations Committee has asked you to reopen for comment your proposed rule in that area. Do you see yourself reopening that comment?

Ms. WHITE. Sorry, I didn't hear. What area?

Mr. SHERMAN. That is in the area of BDCs, small business development companies.

Ms. WHITE. In terms of that—again, the staff is sort of constantly working on what should be done in that space to modernize. But I don't think we—I don't know if we are reopening a formal comment period on that.

I need to get back to you on that because I am not precisely sure what you are targeting—

Mr. SHERMAN. As I seek—

Ms. WHITE. And I have written about that issue, obviously. Yes.

Mr. SHERMAN. As I seek money for things that are important to my district, I look—

Ms. WHITE. Fair enough.

Mr. SHERMAN. —forward to showing the Appropriations Committee that I brought up their issue.

Ms. WHITE. Understood.

Mr. SHERMAN. Final issue. Accounting and auditing consists of defining the terms with generally accepted accounting principles and then auditing the information. And we do a great job of looking at numbers like revenue, expense, assets, earnings per share.

So we have a whole system for those numbers. Now there are a bunch of other important numbers. You—I will give for—it might be the backlog of a manufacturing or aircraft manufacturing company. It might be same-store sales.

And I wonder, in your closing days, or perhaps on the to-do list for your successor, if we could have a project to do the same thing that we do for the numbers in the financial statements for the numbers in what I hope would be a supplemental audited disclosure relevant to certain industries.

Because when I look at Macy's or Nordstrom, my most important number might be earnings per share. Great job, clear definition, they can't change the definition year to year within the company, it is comparable between the two companies. And then I look at same-store sales and it is as loosey-goosey as it gets.

A hundred years ago, we developed the balance sheet and the financial statement. Those were thought to be the most important numbers then. Can we move forward to have industry-specific, perhaps voluntary, perhaps required, supplemental numerical disclosures with this generally accepted—which means SEC or delegated by the SEC—defining and have the public accounting companies that have spent 100 years just auditing two or three pieces of paper audit a few of those numbers? Or are we in this bizarre circumstance where some of the numbers are audited and defined and some aren't?

Ms. WHITE. To some degree, that is correct. Obviously, we have done a lot of work on non-GAAP measures, as you know, that are not currently audited. And we have given a lot of guidance on that.

Same-store sales, as I understand it, would be auditable. There isn't a consistent definition, there is no question about that. I think, in terms of sort of adding it to something that would be required to be audited, you would have to consider—as you would in others the sort of cost benefit of that in terms of those figures. But I think there clearly is not consistency in that space. It is clearly a metric that people pay attention to so—

Mr. SHERMAN. Thank you.

Ms. WHITE. —it is a point well raised.

Mr. GARRETT. The gentleman's time has expired. I now recognize Mrs. Wagner

Mrs. WAGNER. Thank you, Mr. Chairman. And Chair White, thank you for appearing before us today to testify on the SEC's operations, and also I want to lend my voice to the chorus thanking you sincerely for your service as you prepare for whatever comes next. And we wish you all the very, very best.

With the election results from last week, there has been a lot of discussion and strategizing about the prospects of a Department of Labor's fiduciary rule, one of my favorite topics, as you well know. So I wanted to ask some questions regarding that as we look forward to next year.

Earlier this month, Chair White, Merrill Lynch announced that it would no longer allow its customers with Commission-based IRAs to purchase mutual funds. Already, choices are being taken away from customers. Are you at all concerned, ma'am, by the impact on the retirement services market that the SEC oversees and regulates?

Ms. WHITE. I think we are probably all concerned about anything that results in depriving retail investors of reasonably priced reliable advice. I think we have had that discussion before in terms of our own—thinking about a fiduciary duty rule. So, markets do adjust to rules in ways that sometimes have effects that are not desirable.

We are obviously talking to where we overlap various effects of the Department of Labor rulemaking. And our job is to coordinate as best as we can, provide relief if we have the authority to and it makes to kind of minimize impacts. But that is one of the impacts that—again the Department of Labor, certainly they ask a lot of questions about—we have talked about before.

Mrs. WAGNER. Merrill Lynch certainly isn't the only company to announce major changes to their business operations, including even selling off of entire businesses. Are these impacts of the DOL rule being considered by the staff at the SEC as they develop a proposal to establish a uniform fiduciary standard, ma'am?

Ms. WHITE. The answer is, certainly that data will be considered. The status of the SEC is that the staff has provided a detailed outline of how it would approach what is a very difficult thing to do, and certainly to do well, to the Commissioners.

I don't expect that to—there is not—and as I think I have said before, I am one vote on this. And so there is—I don't think there is a consensus to move that forward in the current Commission. But, it is definitely something that continues to be studied, all impacts, and most especially impacts like that are being considered.

Mrs. WAGNER. And to that point, has the SEC undertaken a specific analysis on the impact of the DOL's rule on investments advisors registered with the SEC?

Ms. WHITE. The answer is that is part of the analysis that is done continuously. Actually, there is not a specific sort of project for that. But clearly, before we would move towards a proposal or a rule, it would be quite definitively studied. But it is also being studied as it happens.

Mrs. WAGNER. Earlier this year, before the Capital Markets Subcommittee, David Grim, the Director of Investment Management, stated that an analysis of the potential impacts of a uniform fiduciary standard was ongoing in preparation to draft a recommended rulemaking, but made clear that, "Whether a rule is ultimately proposed and adopted depends on further analysis and action by the full Commission." Can you provide the committee any update on the staff's—as I push towards this analysis and some closure on this—of an analysis of the proposal's impacts?

Ms. WHITE. Again, I think analysis is ongoing all the time. Obviously, everything is up to the full Commission eventually as to what rule to do, if any, and what the contents would be.

Often, when we do rule proposals we do significant economic analysis and then we do even more analysis before we decide whether to move toward adoption. I don't know if that is what he is referencing or not, but it is a continuous process and you certainly complete that process before you would do any final rule.

Mrs. WAGNER. Any timeframe at all? I know that your tenure is coming to a close, but where do you—

Ms. WHITE. Again, as I have tried to make clear, we would do this—if we did this under 913 of Dodd-Frank, it has certain parameters in it. It is a really hard, complex rulemaking. I am one vote, and I think it is very important to do. But it is something that I don't expect there to be action on while I am still the Chair. And I think in this current Commission, you won't see that advanced. We are a Commission of three, so—

Mrs. WAGNER. I understand. And—

Ms. WHITE. Okay.

Mrs. WAGNER. And certainly, I also agree that the jurisdiction of the SEC in this space is what is very preeminent and important vis-a-vis Section 913 of Dodd-Frank. I would just encourage you as you come to an end of your tenure that you make sure that the—in asking and imploring them that the analysis be publicly shared.

And if not publicly, then certainly that it is shared with this committee before there would be any proposal of a uniform fiduciary standard. Thank you.

Ms. WHITE. Thank you. And certainly we would come out with a proposal if there was a proposal. Yes, but I hear what you are saying.

Mrs. WAGNER. Yes. Just to the analysis as we move forward. So, I thank you, Mr. Chairman, I yield back.

Mr. GARRETT. Thank you. The gentlelady has yielded back. Mr. Himes is now recognized.

Mr. HIMES. Thank you. Thank you, Mr. Chairman. And Chair White, let me join my colleagues in congratulating you and thanking you for your service chairing the Securities and Exchange Commission at a challenging time.

There are two questions I wanted to ask you. As you will recall, on July 15th, nine of us on this committee sent you and the Chairman of FINRA a letter about the persistence of the more or less 7 percent IPO gross spread, drawing on the work of Professors Abrahamson, Jenkinson, and Jones, and asking both the SEC and FINRA to undertake a study of the consistency of this pricing.

It is relevant that we were all supporters of the JOBS Act, and we were motivated because of course the JOBS Act, which you certainly lived through, was estimated to save companies $1 million, $2 million a year in Sarbanes-Oxley compliance cost, and of course the average IPO of roughly $100 million, 7 percent gross spread, that is $7 million right there. And a remarkably consistent gross spread.

So, we have not heard back from either the SEC or FINRA, and I am wondering if we can get a sense of whether this is of interest to either and how we might proceed?

Ms. WHITE. It is a point of significant interest, I think, and frankly, you should be getting a letter soon. I had checked on the status of it, so I think there are—I will say this much as I understand it, and I—before you get the response—always study it with the staff who have been studying it.

There is some complexity in some of the data, in terms of some of the cost information that kind of makes it hard to use it as sort of a straight line. It is 7 percent for reasons that aren't necessarily apparent and may vary across those that charge that 7 percent. Again, I don't want to get ahead of the letter.

And so, there may be difficulty studying it, at least in a simple way, in a straightforward way. You also have interacting in all of the space—kind of the changes of the JOBS Act that were made, whether it is the IPO ramp and some of the other changes that have been made. So you have a lot of factors interacting.

But I think you raise a very important point and concern. So, we will be—we should be getting back to you, certainly in my tenure but I think very shortly in my tenure.

Mr. HIMES. Great, thank you, I appreciate that. At the end of the day, we are just sort of asking for some scrutiny here. It may turn out that—

Ms. WHITE. Understood.

Mr. HIMES. —an oddly consistent pricing in a free market. Or it may turn out that it is not.

Ms. WHITE. No, absolutely.

Mr. HIMES. Great. My other question is, there were a number of legislative proposals to define, finally, in statute insider trading. I am partial to my own H.R. 1625. Responding, obviously, to the Second Circuit's decision in the *Newman* case, which, as you know, has led to any number of convictions being overturned, and some uncertainty for prosecutors.

I have struggled to get either Justice or any of the regulators or anybody to say that one simple way, of course, to remove some of this ambiguity—and I fully understand and we have talked about this—that there was a vast body of case law, et cetera, et cetera.

But it does seem to me that clarifying the definition, at least, of insider trading and giving our enforcement mechanisms and the judiciary some clarity there would make some sense. But I have struggled to get sort of an affirmative agreement from either the SEC or from the Department of Justice on this. And so, I am wondering if you can give me a perspective on that question?

Ms. WHITE. I can try. I know we have discussed this before. And I think yours is a very thoughtful bill. I think one of the concerns is the kind of various permutations of what the courts, the SEC, certainly we consider to be illegal insider trading and defining that precisely is a challenge.

Commissions tried to do it or thought about doing it sometime ago by rule, as well. And again, I think we are in a little bit different position than the Department of Justice with respect to *Newman,* because it has less impact on our program because we don't—we have a lower burden of proof on that issue.

We are obviously watching very closely what happens in the *Salman* case that is before the Supreme Court on personal benefit. I think what I have indicated before is, we basically have been arguing in our case is quite a robust insider trading program, including in the *Newman* spaces that it impacts—significant decision, but in narrowing *Newman* to its facts and pretty successful so far. The *Salman* decision on personal benefit, which is part of *Newman,* if that hopefully from the enforcement point of view, that comes out in a way that does provide a reaffirmation of what is required and not required to prove that element.

But I think we revisit the question of either by regulation or by statute, do we need a clear definition of it and then what should that definition be? But I think right now we have done well, I think. Again, it is a consequential decision in our space, too, which we worry about in terms of *Newman.*

And then if *Salman* comes out in a way that reaffirms what we expect it to, I think we think the state of insider trading law is such that we can continue to vigorously enforce it.

Mr. HIMES. Okay, great, thank you. And I yield back, Mr. Chairman.

Mr. GARRETT. The gentleman yields back. The gentleman from Pennsylvania, Mr. Rothfus, is recognized.

Mr. ROTHFUS. Thank you, Mr. Chairman. And Chair White, I think that exchange you just had with my colleague, Mr. Himes, is a testament to your professionalism that you have had before this committee and the knowledge base that you bring with you that you have accumulated over your career. And I just want to commend you for that and for your more than 20 years of public service.

I want to do a little bit of retrospection. I know some of my colleagues are focused on the next couple of months and potential regulations coming down the pike. I want to take a little bit of time to look at what FSOC has been doing. The FSOC, with the backing of the SEC, has wisely taken an activities-based approach to evaluating systemic risk in the asset management industry. Many of us on the committee would like to see this approach applied to the insurance industry, as well.

Can you explain why the FSOC has applied an activities-based approach for evaluating systemic risk to asset managers, but not insurers?

Ms. WHITE. Again, FSOC has the option to do either. And I think that what has been said by FSOC on the asset management space is that they don't rule out coming back to the consideration of a designation of firms in that space. But I did—clearly I think the pivot, as it is sort of referred to, in the asset management space to activities made great good sense in that space.

Lots of the analysis on the insurance industry actually preceded my being on FSOC or at the Commission. It was very thorough analysis in that space. And I think FSOC is—I am, again, confident with respect to where it landed there.

But I fully understand the question and the argument that is being made. But I think the lens through which they looked at the insurance industry was under clear authority to look at it in that particular way. And they were confident in their analysis there.

So you might get it slightly—I think that is a pretty accurate assessment of the thinking.

Mr. ROTHFUS. Also, with respect to insurance, I am a little curious about the SEC's role as a member of both the FSB and the FSOC. As you know, there are concerns about the extent to which the FSB's systemic risk designation process for nonbanks is separate and distinct from the process the FSOC uses to designate nonbank SIFIs.

Fed Chair Yellen, who testified before this committee in September, argued against any allegations of FSB front running based on the assertion that G-SII SIFI designation timeline for MetLife and Prudential was inconsistent with that narrative. Do you recall whether it was the FSOC or the FSB that first designated these non-banks as systemically important?

Ms. WHITE. Again, this either precedes me or it happened about the time I arrived. I will get back to you. I think there was designation by the FSB earlier. But I am not sure of that. I would have to get back to you on that. The prices are separate. I was actually recused on some of the insurance companies, so I am less familiar with it.

The SEC staff does participate extensively in FSB committees. If the subject matter of what is being considered by an FSB doesn't relate to the securities markets, we don't actually participate actively in those workstreams at the FSB. I can get back to you with what information we do have on it, though.

Mr. ROTHFUS. You may want to follow up with that.

Ms. WHITE. Sure.

Mr. ROTHFUS. In your role at the FSOC, have you felt any pressure to enact FSB policies or designations domestically?

Ms. WHITE. None whatsoever.

Mr. ROTHFUS. I yield back, Mr. Chairman. Thank you.

Mr. GARRETT. The gentleman yields back. The gentlelady from Wisconsin is recognized.

Ms. MOORE. Thank you so much, Mr. Chairman, and thank you for your service as well. And thank you, Honorable Mary Jo White, for your service as well. And I wish you well in the future, but you are still the Chair.

Ms. WHITE. I certainly am.

Ms. MOORE. So we want to make sure that you use every single moment in your office to bring about the results that I think American people—we have gone through some rough times in this country, and one of those rough times was when our market funds sort of broke the bank and there were rules floated, rules promulgated to float the NAV.

And since then, we have seen $64 billion in lost funds with—regarding that. And so, I am wondering if you sort of changed your mind about the efficacy of—particularly with our State and local governments not really having anywhere to put these funds that they need to keep liquid that we are already centralizing money in these large banks. And I am wondering if you have had any further thoughts about floating NAV?

Ms. WHITE. One answer, and it is a very important one, is that we at the SEC continue to review the impact of all our rules, and one of the things I have done since I have been Chair is to, as they come out of the gates, not wait 2 years or 5 years to look at them and their impacts, so we have certainly been following that very closely.

I will say that thus far the impacts that have occurred were largely predicted in our economic analysis. For example, the money market fund spaces in terms of in total is about the same in terms of volume size, and dollar size, but a lot of movement to government funds, which we predicted.

I think the diminution on the muni funds that qualify, they may be subject to the retail exemption and therefore not subject to the NAV and obviously they are not impacted. A lot of that has to do with the low interest rate environment and I think not the money market fund rule. Clearly, the really significant movement has been in the prime institutional, where it does apply.

And so, the answer, I think, to date—and again, we watch it very closely—is that the benefit of the reforms that we instituted we believe was the systemic risk issue that is obviously a large one and of great concern.

And I think that is something that we are confident that we have the—confident subject to further analysis that you needed to have the floating NAV for. I think—possibly, watch it closely, you will see some return of those funds to the prime institutional space over time, but we have to see if that happens.

Ms. MOORE. Right now, it is not happening. The SEC put out a report in 2012 on the municipal market that included a lot of recommendations, including providing the SEC authority to directly regulate muni bond disclosures.

Now, you have been supportive of this report in the past, but in light of the MCDC initiative, where several issuers were fined for disclosure violations, do you think we need to do more in Congress to move on these recommendations?

Ms. WHITE. I think it is a broader issue than the MCDC, because that was really a continuing disclosure obligation, and as we have obviously less direct authority in that space than we do for the public company sector. I think the MCDC was enormously effective and it obviously had—we try to carefully calibrate that so that we were mainly aimed, particularly for issuers, and really changing the conduct there and improving the disclosures. And so we really tried to be very measured there.

The underwriters measured also but obviously, there was a different settlement paradigm for them. We have seen improvement in those disclosures, but I would not conclude that therefore obviates necessarily the need for greater authority for the SEC, and that is something that I—the staff is, again, it is a continuous process, but we will be looking at—and is looking at sort of continuously. So there may be—we may speak further on that in the future.

Ms. MOORE. Thank you again, and thank you again for your service, and I hope that you stay floating somewhere on the fringes so that we can have someone to call.

Ms. WHITE. Thank you very much. Thank you.

Ms. MOORE. I yield back, Mr. Chairman.

Mr. GARRETT. The gentlelady yields back. Mr. Tipton is recognized for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman, and thank you for your service as well, Chair White. Thank you for taking the time to be here. I would like you to be able to expand maybe a bit, if you would, on the sandbox regulatory framework in regards to innovation being able to provide access to capital. And is it your sense that the SEC should take the lead in developing regulations for the financial technology center and encourage a flexible regulatory structure to allow for experimentation and innovation within the FinTech world?

Ms. WHITE. There are several questions in that. I think I am supportive of the SEC asserting its jurisdiction in spaces that we are in. I think it is important to do that. We are doing that in consultation, coordination, and cooperation in the Treasury markets, as well. I think we do a good job in those spaces, so I think we should be asserting our authority there. I also think that where we come out is yet to be seen on various issues which is as it should be, I think.

And I had mentioned earlier that I had set up a FinTech working group some time ago to, among other things, task them to come up with recommendations as to how the SEC should proceed, clearly, having the lens of this innovation is exciting and can yield tremendous benefits so we don't want to be stifling in what we do. We obviously have to be concerned about protecting investors in everything that we do, as well. So, I think we have the right group working on it. I think we have the right mindset working on it, so—

Mr. TIPTON. Yes, I was a little concerned when Comptroller Curry had made a few comments that seemed to indicate it is a little more of a one-size-fits-all, so I was heartened to hear your comments a few moments ago saying that one-size-fits-all is not the best path, oftentimes—

Ms. WHITE. Yes, again, just to be clear, at the end of the day we have to make sure investors are protected in whatever we do, but I think it is something that we have to really look at with fresh and open eyes and an open mind.

Mr. TIPTON. Going a little bit to some of the forums that you held earlier, and understanding you're gathering the recommendations from those forums, what was your sense of what the big challenge is that small businesses are really facing?

Ms. WHITE. There are a lot of challenges that small businesses face, which I think all of the regulators need to be very focused on, and I think we are at the SEC. You obviously have a lot of startups in the spaces that we are looking at, whether it be automated advice—I think one of the—well, I was watching one of the panels—one of the predictions is that we are going to have more consolidation of automated advice givers, also known as robo-advisors, but they would like that to drop from the lingo that is out there.

And you worry a bit about those smaller, maybe high-quality advice-givers that may find it too difficult to really sort of penetrate the market space. We clearly are of the view that registered advisors, whether they are automated providers or in part automated providers of advice, are subject to fiduciary duty rule, and have to comply with those obligations.

But I think one of the things we are doing in our national exam program, that is a priority for our exam program to see sort of across the industry, how they are carrying out their responsibilities. And what we try to do from that kind of exam is then to share kind of the learning, frankly, and hopefully that helps some of the smaller outfits, but you can't tell yet. I think it is a little too early to predict.

Mr. TIPTON. And you may not be able to fully speak to this because I know you are reviewing the recommendations, but did you have a sense coming back from the private sector that being able to have flexibility to be able to streamline when we are talking one-size-fits-all, the multiple costs that are associated with redundancy and regulations, if that was something that the private sector was really wanting to be able to encourage?

Ms. WHITE. I think the private sector encourages it. I think whichever sector I am in, this makes sense. Sometimes one-size-fits-all in a certain range, but most often, if you have the ability to do it, you want to tailor regulation to the particular problem.

Mr. TIPTON. And just kind of a final—you wear a couple of hats, but with the FSOC that you sit on, would you support the Fed's attempt to usurp the SEC's jurisdiction as a regulatory agency over the capital markets?

Ms. WHITE. No, I would not, but I don't think they are trying to do that, at least since I have been here.

Mr. TIPTON. Okay. Great. Thank you so much, and thanks for your service.

Thank you, Mr. Chairman. I yield back.

Mr. GARRETT. Thank you. The gentleman yields back.

The gentleman from Maine. It is Maine, right?

Mr. POLIQUIN. Yes, Mr. Chairman, it is Maine.

Ms. WHITE. I am coming to Maine. I am coming to Maine.

Mr. GARRETT. Everyone is going to Maine after—

Ms. WHITE. I knew he was going to ask me.

[laughter]

Mr. GARRETT. We can restart the clock and give him an additional 30 seconds to speak about Maine.

Mr. POLIQUIN. I would appreciate that very much, Mr. Chairman. Thank you, and I thank Chair White very much for being here. Your retirement from your great service to our country, and thank you very much, also does provide an opportunity for you to vacation more, and Maine, as you know, is vacation land, and it is also a great place to buy a second home, and we would love to invite you to be a taxpayer up there, too, Chair White. So, either way would be just great but—

Ms. WHITE. Now you are going a little too far.

[laughter]

Mr. POLIQUIN. I did want to cover three issues very quickly with you today, Chair White, if I can. And we have talked about a couple of these already but of course, your mission that you folks pursue over there very aggressively, and I appreciate it, is to make sure our small investors have the information they need to make the conscious decisions, the important decisions, to prepare for their retirement nest egg or college savings or what have you.

Now, you folks in rule 30e-3 made a decision not to move forward with this rule and I am very grateful. Thank you very much. And for two reasons in my case, Chair White. Number one, we have a highly rural district in Maine's Second District, and there are a lot of folks who are not connected to broadband. We have a problem with cell phone coverage in many parts of our district. Now, there are 60 million Americans who live in rural districts. In addition to that, there are about 46 million who are seniors 65 years and older who have a hard time navigating the internet.

So it is critically important to make sure that our senior savers, and savers and investors in rural districts, have the information that is so critical to make the decisions they need. Now, also, in full disclosure Chair White, we make that paper in Maine. That very fine paper that these mutual fund reports are printed on is made up at Twin Rivers and Madawaska, way up along the Canadian border, 600 terrific jobs, and I advocate for them all the time.

Now, I know a lot of the Wall Street firms want to forgo the costs of buying paper and printing on the paper and sending it out to investors. However, our investors need this information if they have no other way to get it. So I am pleased and grateful that you have not moved forward on rule 30e-3 that would make it more difficult for our seniors to receive this information on paper.

So my question to you, Chair White, is why don't you just redraw the rule?

Ms. WHITE. What I said—we have discussed it, I know—at the time was, we actually adopted the rest of the proposal for investment company reporting was—that we got extensive important comments along the lines that you have just made, that I directed to the staff to study further, and then come back to the Commission, basically targeting year-end to come back to the Commission with a recommendation after that was done.

We were looking at who is paying the bills, to try to get better cost data. So that undertaking is quite actively proceeding, and it is something that I think, again, the comments were well taken, and needed further study. I can't tell you where the Commission comes out ultimately or precisely when.

Mr. POLIQUIN. The decision will be made, if I understand you correctly, you expect by the end of the year before you move on to your—

Ms. WHITE. Again, I have spoken publicly—I did at the open meetings, that we were targeting year-end for that.

Mr. POLIQUIN. Okay. Let's move on, if I can, to a separate topic. We don't have a lot of time to deal with the role of FSOC when it comes to asset managers, and I know a couple of questions have already been asked about this, Chair White. You and I may disagree on this, but if we both run pension management firms and I say that my performance is better than yours, then your clients will come to my shop, but the assets are holdover here at French Hill's custodian bank. So, if your firm gets in trouble, it represents no systemic risk to the economy.

That being said, and also, Chair White, the fact that you folks have already adopted a new more aggressive series of rules to make sure you aggressively examine our asset management community, and you folks are the primary regulator for pension fund managers and folks who run college savings plans, why don't you just recommend, if I may suggest to FSOC, that you take the potential designation of asset managers as too-big-to-fail just right off the table. Do you need it anymore?

Ms. WHITE. I do think this is enormously important to safeguard our financial system, to have FSOC here, if not continuously address risks, emerging risks, possible risks down the pike. So, taking things off the table, you really are sort of charged with continually looking at it.

Having said that, clearly there is a significant pivot to activities which made sense. We have obviously done rulemaking since then, but I think FSOC's effort says they certainly to date are complementary of what we are doing at the SEC, not contradictory.

Mr. POLIQUIN. That concern I have, Chair White, is that of course, if any asset manager that represents no systemic risk to the economy is so designated, there will be a whole layer upon layer of new regulations that will drive up the cost and drive down the rate of return of our small investors trying to save for college or their retirement. So that is why it would be terrific if we could use your influence during the last couple of months you are with us to make sure they get the message over there at FSOC, and I really appreciate it.

And again, congratulations, we will be looking forward to welcoming you to Maine whenever you find that to be the right time. Thank you, Mr. Chairman, I yield back my time.

Mr. GARRETT. The gentleman yields back. Mr. Hill is now recognized for 5 minutes.

Mr. HILL. I thank the Chair, and I thank you, Chairman Garrett, for your service in this Congress as chairman of our Capital Markets Subcommittee. You have done an outstanding job. Chair White, it is a pleasure to see you, and as someone who has testified before Congress before, I always thank you for your forthright testimony. It is a relative statement compared to many who come before us. Sometimes the bar is relatively low to step over. But I really do appreciate your effort to be responsive to the committee in a timely way.

The market structure topic, we have talked about that before. And this is something in the first term I have had in Congress over the past 2 years that has concerned me because we have some 50 trading platforms and we have added recently a new exchange. And when the Commission published its list of rules that would be reviewed pursuant to the regulatory flexibility act, it included Regulation NMS. And have you—where are you on your commitment to fully vet and review that rule?

Ms. WHITE. NMS, as I mentioned before, as least as I look at our market structure work, it is both things that we know now we think at least should be fixed, and it is a comprehensive review of all the relevant issues. Obviously, one of the biggest relevant issues is NMS itself, and that is something that is both is something that is the subject of our MSAC committee's work and also the SEC's comprehensive review.

There are a lot of pieces to that. One of the reasons we want to be data-driven in the market structure work is that we don't—sort of, we do have the safest, most reliable markets in the world and strongest I think, and we don't want to do something would have unintended consequences. But in terms of examining NMS from the ground up, it is very much on the table to do.

Mr. HILL. When do you think the Commission will review their work and make a proposal there?

Ms. WHITE. With respect to NMS itself? I can't really predict the precise timing, I guess it may be up to somebody besides me, but in terms of actually when it will be before the Commission. But I am sure it will be—well, I shouldn't say I am sure, but I would expect it to remain front and center going forward.

Mr. HILL. So this issue between trading venues and exchanges is a related topic. I think it all relates to us having the most competitive markets and having the most competitive particularity equity markets. I noted that former Commissioner Gallagher gave a speech not long ago where he talked about should exchanges remain self-regulatory organizations, SROs, in your work, as you head out, have you got and developed a personal view on that?

Ms. WHITE. That is something, we continue to say, that is also, I will say, in one of our subcommittees that is very focused on it, we continue to do work on it, I haven't formed a view on it, other than I think there are significant questions raised.

Mr. HILL. I want to switch gears briefly, and it is something that I think Congress has reaffirmed over the past years, and certainly the Commission has, and that is the issue that for equity research, one can use so-called soft dollar Commissions to pay for investment research. Is that still the position of the Commission? And under 20 AD, for example?

Ms. WHITE. There is not a prohibition on that, right?

Mr. HILL. Yes. But I hear that in Europe, they are headed in a different direction, under their 2014 proposal they put out called markets and financial instruments directive. Couldn't that create a real disparity for U.S. investment banking and research firms for their clients in Europe versus their clients in the United States?

Ms. WHITE. It certainly has that potential. One of the things that struck me, certainly in the first week I entered the door, was just how much we need to be coordinating with international regulators for—certainly among the reasons, the ones you are just teeing up right now because, and it is something we do consider when we decide our own policies as well.

You are looking at, how do you coordinate two different systems? Who is at an advantage and a disadvantage? And so, it is something we continue to discuss with them in various forms, actually.

Mr. HILL. Would it be something you would be willing to write a letter to the European securities regulators and caution them about? Because of the disparate treatment that our investment research companies—

Ms. WHITE. I think I would need a little further briefing on that from the staff as to exactly, at least in their view, how they sync together or don't. But certainly if I was of that view, after that, I certainly wouldn't hesitate. I might not do it by letter, but—

Mr. HILL. You have time. It doesn't take place until 2018.

Ms. WHITE. I do have time.

Mr. HILL. But in 2017, you know how firms work well in advance of deadlines, and I think it could put American companies at severe disadvantage. Thanks for taking a look at it for me. I yield back, Mr. Chairman.

Ms. WHITE. Thank you.

Mr. GARRETT. The gentlemen yields back.

And I think Mr. Barr is going to have the last word on this entire matter.

Mr. BARR. I would like to join my colleagues in also thanking our chairman of the Capital Markets Subcommittee for his leadership. And, Chair White, thank you for your service as head of the Commission and for sharing your expertise and your insights in helping us with our oversight responsibilities over the Commission, over these last several years.

I want to focus on the part of the Commission's statutory mission to maintain fair, orderly, and efficient markets and facilitate capital formation. Following up on the questions from my colleague, Mr. Royce, regarding fixed-income markets, as you know, significant attention has been devoted to liquidity concerns in fixed-income markets, both in the U.S. and globally.

And when you last testified, I believe, in front of our committee and when you were asked about the regulatory impact on liquidity and illiquidity that we are witnessing in fixed-income markets, I think you testified that there is no question that there are concerns about the liquidity in fixed-income markets, but that you could not identify the culprit. And we have heard similar testimony from the Treasury Secretary, who denies that regulations, bulk or risk retention, Basel III can be pinpointed to blame here.

And yet, we continue to see, since your last appearance in front of our committee, evidence of regulatory impacts on liquidity. On September 27th, former Treasury Secretary Hank Paulson commented that the Volcker Rule solved a problem that was not a problem. We have much less liquidity in the markets. It has become much harder for financial institutions to provide liquidity. That is his testimony.

And then you had a CEO of one of the world's largest electronic market makers announcing that his firm would no longer invest in certain bond exchange-traded funds because of underlying securities that become too hard to trade. And then on October 7th, the value of the British pound plummeted from about $1.26 to $1.18 in a matter of minutes during trading in Asia, with some electronic platforms recording trades below $1.15. The Wall Street Journal attributed this extreme volatility in part to a lack of currency traders in the foreign exchange markets.

So given some of these more recent developments, have you been able to determine whether regulations, the Volcker Rule, risk retention, or Basel III are in fact impacting this illiquidity?

Ms. WHITE. The answer to that is, no, we don't have the evidence to make that finding. I think there are also some differences of opinion as to whether you have actually had the deterioration in liquidity that you are basically—a number of market participants are noting from the data that we have available.

One of the things that—because I sort of constantly go back to the staff and say, here is what the data looks like, we report quarterly to this committee and several of us regulators, primary liquidity, secondary liquidity, in the corporate bond markets. And whereas you clearly have some deterioration if you use the measure of dealer inventories, the other measures really seem to be holding pretty constant.

We obviously had some impact from Brexit, but that seemed to recover. And so one of the things that is possible in terms of, why are there two different views out there is most of liquidity measures are based on completed transactions. Now, there can be transactions that don't get completed because you don't have an available buyer or seller. And so it is kind of a speculative thought, I suppose. But it could be that some of what isn't being measured is actually transactions not being consummated as opposed to ones that may take a while to consummate.

So there still is a different—the bottom line is, no, we don't see that impact in the data and we don't see the deterioration that others see in the data that we have.

Mr. BARR. But there is evidence out there. So for example, when the CEO of Blackstone says when they passed Volcker, there were 25 firms making markets in junk-bonds, guess how many there are now? Five. From twenty-five to five. Triumph? You decide. What happens when things get difficult and the market now just locks up? That is not healthy for capital markets, and this is happening all over. It affects all markets and liquidity is coming down because we mandated that to make the world safer. But this does not make the world safer. This is encouraging the world to be—this is not encouraging the world to be safe, because when people need to sell and there isn't liquidity, what happens? Your reaction to that?

Ms. WHITE. I think that is the dealer inventory metric I was just talking about. But under Volcker, you also have the market maker exception, so that you can have banks basically acting as market makers that still permit it. So that can be a source of liquidity.

But look, just sort of stepping back, these are significant concerns. And we study it globally, we are studying it domestically, we are studying it getting all the available data that we can and—and really staying on top of it. But our economists at the SEC are actually directed to report to Congress, I think in May of 2017, of the impact of regulations collectively on corporate bond liquidity. That is part of what they will be reporting on.

Mr. BARR. My time—

Ms. WHITE. It is a hard thing to do, a hard thing to ferret out also, and a hard thing to measure.

Mr. BARR. My time has expired, and you are exiting your post, but I would encourage your successors at the SEC to continue to evaluate that particularly in their role as a member of FSOC.

Thank you. I yield back.

Mr. GARRETT. There are a lot of other Members out in the other chambers who are just waiting to come in at this last minute.

[laughter]

Because I was that told you, unlike many other witnesses who come before us, do not have a hard stop date. So it is just going to keep—no, it is not.

Ms. WHITE. I just might as well sleep here right now, if it is okay.

Mr. GARRETT. So that concludes today's hearing. And let me once again say thank you for your service. Someone made the comment, and I don't think it was meant to come out that way, they said they thank you for your service and it is relative to the others here. And it is very true that the bar for the other people here is pretty low. But you certainly have greatly exceeded that by the breadth of your expertise and your dedication to public service in this position specifically.

So I personally thank you for what you have done, although I will say at the very beginning with a "but," but on those areas that we disagree on.

Ms. WHITE. I understand. And thank you for your service, as well.

Mr. GARRETT. Thank you.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place her responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And with that, this hearing is adjourned.

[Whereupon, at 12:46 p.m., the hearing was adjourned.]

A P P E N D I X

November 15, 2016

Testimony on "Examining the SEC's Agenda, Operations, and FY 2018 Budget Request"
by
Chair Mary Jo White
U.S. Securities and Exchange Commission
Before the
Committee on Financial Services
United States House of Representatives
November 15, 2016

Chairman Hensarling, Ranking Member Waters, and Members of the Committee:

Thank you for inviting me to testify today regarding the current work and initiatives of the U.S. Securities and Exchange Commission (SEC or Commission), and the SEC's FY 2018 Preliminary Authorization Request.[1] The SEC is a critical agency that serves as the bulwark safeguarding millions of investors and the most vibrant markets in the world. Thanks to the exceptional work and commitment of our superb staff, the Commission has in recent years strengthened its operations and programs across the agency and has aggressively enforced the securities laws to punish wrongdoers, adopted strong measures that protect investors and our markets, and invested in the people and technology required to ensure that our markets remain the strongest and safest in the world. These and other efforts across our extensive areas of responsibility are all in furtherance of our essential mission: to protect investors; to maintain fair, orderly, and efficient markets; and to facilitate capital formation.

The Commission's actions and accomplishments since I became Chair in April of 2013 a little over three and half years ago, have been extensive.[2] The last three and a half years have been marked by vigorous enforcement and examination programs, empowered with new tools and methods to detect and hold wrongdoers accountable and protect investors. Aided by enhanced technology to analyze suspicious activity and strengthened by initiatives like self-reporting, SEC staff has been able to identify and target the most significant risks for investors across the market. In fiscal year 2016 alone, the Commission brought over 850 enforcement actions, an unprecedented number; secured over $4 billion in orders directing the payment of penalties and disgorgement; performed approximately 2,400 exams, a seven-year high; and, even more importantly, continued to develop cutting-edge cases and smarter, more efficient exams.

The Commission over the last three and a half years has pursued very consequential rulemaking and other measures designed to protect investors, strengthen the markets, and open new avenues for capital-raising. Since I last testified, the agency, for example, has advanced major rules addressing important equity market structure issues – including the transparency of alternative trading systems, the disclosures received by investors of order handling practices, and

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[1] The views expressed in this testimony are those of the Chair of the Securities and Exchange Commission and do not necessarily represent the views of the President, the full Commission, or any Commissioner.

[2] *See generally SEC Accomplishments: Protecting Investors and Our Markets through Rigorous Oversight, Vigorous Enforcement, and Transformative Rulemaking* (June 13, 2016), *available at* https://www.sec.gov/about/sec-accomplishments.htm.

is expected to consider this afternoon approving a final plan for the consolidated audit trail (CAT) – while moving forward with a comprehensive assessment of other fundamental structural questions. We also continued implementation of a series of proposals to address the increasingly complex portfolios and operations of mutual funds and exchange-traded funds (ETFs), including modernizing the data reported by funds and their advisers, adopting final rules for enhanced liquidity management by funds, and a proposal for new controls on their use of derivatives. We adopted new rules to better enable businesses to raise capital through local and regional offerings and advanced our comprehensive review of the effectiveness of our disclosure regime, including through several detailed proposals. We finalized critical components of the regulatory regime for security-based swaps and established new standards for the clearing agencies that stand at the center of our financial system. And we advanced other rules mandated by statute, including new disclosures by resource extraction issuers and, jointly with five other federal financial regulators, new requirements for incentive-based compensation arrangements at financial institutions.

This work, which is described in greater detail below, marks the latest phase of an extraordinary regulatory effort by the agency following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010 and the Jumpstart Our Business Startups Act (JOBS Act) in 2012. This effort has enlisted all of our policy divisions and offices. In addition to advancing very significant discretionary initiatives, the Commission has now adopted final rules for 67 of the 86 mandatory rulemaking provisions of the Dodd-Frank Act directed to the SEC (a 78% completion rate), the majority of them since I became Chair.[3] These include all of the mandates in the areas of private funds, the Volcker rule, clearing agencies, municipal securities advisors, credit rating agencies, specialized disclosures, and all but one of the mandated asset-backed securities reforms. We have completed all of the rulemakings directed by the JOBS Act. And we have made significant progress advancing the rulemakings required of us late last year under the Fixing America's Surface Transportation Act (FAST Act). Some of the most significant initiatives of the last three and a half years include:

- *Equity Market Structure*. An imperative of our modern equity markets is strong technological systems and operations, and the Commission has adopted Regulation Systems Compliance and Integrity (SCI) to require critical market participants – including exchanges, clearing agencies, and large alternative trading systems (ATSs) – to implement wide-ranging measures designed to reduce the occurrence of systems issues and improve resilience when such issues do occur. The self-regulatory organizations (SROs), acting under Commission oversight, have also continued to develop further measures to enhance the operational integrity of the markets. In addition, the Commission has proposed new rules to enhance market transparency, with the first-ever major update of Regulation ATS, and proposed rules requiring important new disclosures for how investor orders are handled by broker-dealers. The Commission has also proposed enhancements to our core regulatory tools of registration and firm oversight. And the Commission is expected to consider this afternoon a final plan for the consolidated audit trail, which will allow regulators to track all activity in U.S. markets in

[3] The current status of the Commission's implementation of the Dodd-Frank Act is summarized at https://www.sec.gov/spotlight/dodd-frank.shtml.

National Market System (NMS) securities. Beyond these efforts, the Commission has also expanded its consideration of additional market structure reforms, assisted by the establishment of the Equity Market Structure Advisory Committee, which has made recommendations in a number of important areas, including the use of exchange access fees.

- *Money Market Funds.* To address the risk of investor runs, as experienced during the financial crisis, the Commission in 2014 adopted rules that fundamentally change the way money market funds operate. These rules became fully operational on October 14, 2016.

- *Asset Management.* Following that work, the Commission undertook to enhance its regulatory regime for the broader asset management industry. In furtherance of that goal, the Commission this year adopted major rules to improve and expand the information reported to the Commission and investors by funds and their advisers, as well as to impose new controls on how funds manage their liquidity and to permit the use of swing pricing. The Commission has also proposed significant enhancements to the regulation of funds' use of derivatives, and new rules for transition and business continuity planning by advisers.

- *Capital Formation.* Implementing mandates from the JOBS Act, the Commission adopted rules to increase access to capital for smaller companies by revamping and enhancing Regulation A, and other rules to permit companies to offer and sell securities through equity crowdfunding. Separately, the Commission, in an exercise of our discretionary authority just last month adopted final rules to facilitate intrastate and regional securities offerings, including offerings relying on recently adopted intrastate crowdfunding and other provisions under state securities laws. We also worked with the SROs to build a pilot program to widen the minimum quoting and trading increments – or tick sizes – for stocks of some smaller companies, which began operating in early October and which will aid in understanding whether wider tick sizes enhance the market quality and secondary liquidity of these stocks. This work follows on the Commission's adoption of rules to allow general solicitation for certain offers and sales made under Rule 506, as well as a rule to disqualify certain felons and other "bad actors" from participating in private securities offerings made under Rule 506.

- *Disclosure Effectiveness.* The staff of the Commission has undertaken and continues a comprehensive assessment of the effectiveness of our disclosure regime for investors and issuers. As part of that assessment, the Commission issued a major concept release that seeks input on modernizing certain business and financial disclosure requirements in Regulation S-K for the benefit of investors and companies. We also issued a request for comment on certain financial reporting and disclosure requirements in final statements under Regulation S-X, and the Commission proposed targeted amendments to address redundant, overlapping, and outdated disclosure requirements in Regulations S-K. The Commission also pursued improvements to disclosure through rule proposals in targeted areas, including Industry Guide 7, which addresses disclosures about mining company properties, and updates to the definition of "smaller reporting companies" that qualify for certain scaled disclosures under Regulations S-K and S-X.

- *Security-Based Swaps.* The Commission has implemented a substantial portion of a regulatory regime for security-based swaps required by the Dodd-Frank Act, which is designed to ensure that the approximately $11 trillion market for security-based swaps is safer, more transparent, and more efficient. The Commission has adopted the core rules for reporting security based swap transactions to regulators and the public through security-based swap data repositories. We have also adopted the framework for registering security-based swap dealers and major security-based swap participants with the Commission, as well as rules to help ensure that non-U.S. dealers participating in the U.S. market comply with our rules. Most recently, the Commission adopted extensive requirements for how these entities must conduct business with counterparties, and rules for how they acknowledge and verify their transactions. Finalizing the remainder of the rules for dealer activities – including those for capital, margin, and asset segregation – and operationalizing those regimes remains a high priority for this year.

- *Asset-Backed Securities.* The Commission in 2014 adopted wide-ranging rules to enhance transparency and better protect investors in the asset-backed securities market. The Commission completed rules requiring significant enhancements to registered offering disclosures for asset-backed securities, a market with $4.8 trillion in issuances over the past decade that stood at the epicenter of the financial crisis. Acting jointly with five other federal agencies, the Commission also adopted credit risk retention rules, which require securitizers of asset-backed securities to keep "skin in the game" for the securities they package and sell.

- *Executive Compensation.* In 2015, the Commission adopted the rule mandated by the Dodd-Frank Act requiring a company to disclose the ratio of compensation of its chief executive officer to the median compensation of its employees. The Commission in 2015 also proposed the remaining executive compensation rules required by the Dodd-Frank Act, including disclosure of whether a company allows executives to hedge the company's stock, disclosure of pay versus performance measures of executive compensation, and new disclosures and rules for clawing back incentive compensation erroneously awarded (none of these mandates have deadlines under the Dodd-Frank Act). Most recently, earlier this year we re-proposed, jointly with other regulators, rules regarding disclosure and restrictions for certain incentive-based compensation arrangements at large financial institutions.

- *Clearance and Settlement.* In September, the Commission adopted new rules to enhance the oversight of clearing agencies that are deemed to be systemically important or that are involved in complex transactions, such as security-based swaps. At the same time, the Commission proposed to shorten the standard settlement cycle for most broker-dealer transactions to two business days after the trade date ("T+2"). And last year, the Commission took the first major step in the regulation of transfer agents in decades, issuing an advance notice of proposed rulemaking, concept release, and request for comment on the full regulatory regime.

- *Credit Rating Agencies and Credit Ratings.* The Commission adopted in 2014 a comprehensive package of a dozen reforms for the regulation and oversight of credit ratings agencies, including new controls on the management of conflicts of interest. The Commission has also acted to remove almost all of the references to credit ratings from its rules and forms.

- *Broker-Dealer Financial Responsibility.* The Commission, soon after I became Chair, adopted rules to provide additional safeguards with respect to a broker-dealer's custody of customer securities and cash, as well as to strengthen the audit requirements for broker-dealers. In addition, the Commission adopted amendments to the broker-dealer financial responsibility rules to enhance protections for customer assets, firm capital requirements, and risk management controls. In 2016, we proposed, jointly with the Federal Deposit Insurance Corporation (FDIC), rules that implement procedures for the orderly liquidation of covered broker-dealers.

- *Municipal Advisors.* In 2014, the Commission established a new regulatory regime to protect municipalities and investors from conflicted advice and unregulated advisors by requiring municipal advisors to register with the SEC and to comply with the rules of the Municipal Securities Rulemaking Board (MSRB). And we continue to work with the MSRB to establish the full suite of regulatory obligations for municipal advisors.

- *Volcker Rule.* The Commission, in December 2013, adopted, jointly with other regulators, rules to implement a prohibition on proprietary trading and certain relationships with hedge funds and private equity funds. Compliance with those rules was required in 2015, and the SEC is now working in coordination with the other financial regulators to ensure that firms are in compliance.

While our work in enforcement and rulemaking are the most visible examples of the agency's actions in furtherance of our mission, the imperatives of our mission are carried forward each day by all of the dedicated staff of our divisions and offices. The Division of Corporation Finance, for example, reviews the annual and periodic reports of thousands of issuers each year, helping to ensure that investors receive full and fair disclosure about the public companies in which they invest. And staff in the Office of Small Business Policy alone responded in FY 2016 to over 1,500 inquiries from small businesses about their questions and concerns. During the same period, the Division of Trading and Markets, and the Office of Municipal Securities reviewed more than 3,200 filings from exchanges and other SROs to preserve a fair and orderly marketplace for all investors, a 21% increase from last year. The

Division of Investment Management in FY 2016 reviewed filings covering more than 12,700 mutual funds and other investment companies, where many individuals invest their hard-earned money to save for retirement, college, and other important goals. Our economists in the Division of Economic and Risk Analysis produced more than 30 incisive papers and publications in FY 2016, including two major analyses to help inform our work on asset management. And the numbers are only a small part of the story. Each instance of such engagement makes our markets better and safer for investors.

Throughout the agency, we are increasingly harnessing technology to better identify risks, uncover frauds, sift through large volumes of data, inform policymaking, and streamline operations. The Commission's emphasis on technological improvements is continuing to pay dividends, improving efficiencies while allowing us to cover more ground than ever before. We continue to build on this progress by seeking sufficient appropriated funds for a number of key information technology (IT) initiatives, including improvements to the Electronic Data Gathering, Analysis and Retrieval (EDGAR) system and our enforcement surveillance tools.

Vigorously Enforcing the Securities Laws

The SEC's vigorous enforcement program is at the heart of our efforts to protect investors and instill confidence in the integrity of the markets. The Division of Enforcement (Enforcement) advances these efforts by investigating and bringing civil charges against violators of the federal securities laws. Successful enforcement actions impose meaningful sanctions on securities law violators, result in penalties and disgorgement of ill-gotten gains that can be returned to harmed investors, and deter future wrongdoing.

Enforcement delivered very strong results on behalf of investors in FY 2014, FY 2015, and in FY 2016. The SEC filed a record 868 enforcement actions in FY 2016 covering a wide range of misconduct, and obtained orders totaling over $4 billion in disgorgement and penalties. Of the 868 enforcement actions, a record 548 were independent actions for alleged violations of the federal securities laws, and 320 were either actions against issuers who were delinquent in making required filings with the SEC or administrative proceedings seeking bars against individuals based on criminal convictions, civil injunctions, or other orders.

Even more important than the numbers, these actions addressed the most important issues for investors and markets, spanned the securities industry, and included numerous important "first-of-their-kind" actions. Significantly, more than 60% of our independent actions in FY 2016 also included charges against individuals. In FY 2016, the SEC charged individuals in 337 of our independent actions, the highest number in the last five years. A few other important features of our enforcement program also bear highlighting.

Executing the Admissions Policy

The Commission continues to use its first of a kind admissions policy to aggressively seek admissions in certain cases where heightened accountability and acceptance of responsibility by a defendant is particularly important. These types of cases include those involving particularly egregious conduct; where large numbers of investors were harmed; where the markets or investors were placed at significant risk; where the conduct undermines or obstructs our investigative process; where an admission can send an important message to the markets; or where the wrongdoer presents a particular future threat to investors or the markets. Since implementing the admissions protocol in 2013, the SEC has obtained admissions from over 70 entities and individuals, including major financial institutions, national auditing firms,[4] and an international pyramid scheme targeting Latino communities. While this is an evolving protocol that continues to be applied to more cases, as we indicated when we implemented it, the majority of cases will continue to be resolved on a "neither admit nor deny" basis, which is the norm for other civil law enforcement agencies and in private litigation.[5] This practice allows the Commission to obtain significant relief, eliminate litigation risk, return money to victims more expeditiously, and conserve enforcement resources for other matters. We are committed, however, to requiring admissions where appropriate, and are prepared to litigate those cases if necessary.

Enhancing Focus on Key Areas of Misconduct

The Commission also continues to focus resources on key areas of misconduct. One critical area is financial reporting and issuer disclosure. Comprehensive, accurate, and reliable financial reporting is the bedrock upon which our markets are based, and is essential to ensuring public confidence in them. And at my direction, since 2013, our Enforcement Division has intensified its focus on pursuing violations in this area. Part of this effort involved creating a dedicated group of accountants, attorneys, and analysts who use cutting edge data analytical tools to look for evidence of reporting discrepancies and other early warning signs of financial reporting fraud. Holding responsible individuals accountable for their role in this kind of financial misconduct is a significant priority of mine and in FY 2016, we charged 127

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[4] The Commission does not accept "neither admit nor deny" settlements where a defendant has acknowledged relevant facts in a settlement with other criminal or civil authorities, or been convicted. This regularly occurs in connection with guilty pleas that arise from parallel criminal investigations, which frequently are matters that we referred to a criminal prosecutor in which our own investigation assisted in securing a favorable resolution on the criminal side as well. While these cases are not included in the admissions cited above, they serve the same purpose and have the same impact. We have obtained these kinds of settlements with dozens of individuals and entities since this policy changed at the end of 2011.

[5] In the majority of its cases, the Commission, like all other federal agencies with civil law enforcement powers, settles on a "no admit, no deny" basis. But, in 2013, we determined that our Enforcement program's deterrent message could be enhanced by requiring admissions of wrongdoing in appropriate cases. We are pleased to see that other civil law enforcement agencies have begun to follow our lead. For example, the CFTC entered into its first admissions settlement in October 2013. *See* Release PR6737-13, *CFTC Files and Settles Charges Against JPMorgan Chase Bank, N.A., for Violating Prohibition on Manipulative Conduct In Connection with "London Whale" Swaps Trades* (Oct. 16, 2013), http://www.cftc.gov/PressRoom/PressReleases/pr6737-13, and Max Stendahl, *CFTC Mimics SEC Policy Shift With JPMorgan 'Whale' Pact*, Law360 (Oct. 16, 2013, 7:47 p.m.), http://www.law360.com/articles/480686/cftc-mimics-sec-policy-shift-with-jpmorgan-whale-pact. Similarly, the CFPB now requires admissions in certain cases and entered into its first admissions settlement in February 2014. *See* Press Release, *CFPB Takes Action Against Mortgage Lender for Illegal Payments*, Feb. 24, 2014, http://www.consumerfinance.gov/about-us/newsroom/cfpb-takes-action-against-mortgage-lender-for-illegal-payments/.

individuals in our substantive issuer reporting and disclosure cases, more than twice the number of individuals we charged in FY 2014.[6]

Another key area of enforcement is investment management, where the SEC has continued to bring actions addressing a widening range of issues, including performance advertising, undisclosed conflicts of interest, compliance issues, and private equity fees and expenses. Among these are "first-of-their-kind" actions for failures to report material compliance matters to fund boards and the improper allocation of expenses by private equity advisers. The Enforcement Division's focus on private equity has expanded significantly over the past few years and, to date, the SEC has brought eleven enforcement actions related to private equity advisers breaching their fiduciary duties by charging undisclosed fees and expenses, shifting and misallocating expenses, and failing to adequately disclose conflicts of interest.

In addition, during the last few years, Enforcement has emphasized cases involving violations in market structure areas, bringing significant enforcement actions involving high frequency trading, the operation of trading platforms such as dark pools, manipulative trading, and market access and technology controls. We have brought cases, for example, against ATSs for misusing confidential customer trading information, actions against high frequency traders for manipulative trading and net capital violations, and against exchanges for providing some, but not all, traders with additional information about certain order types.

Enhancing the Whistleblower Program

The SEC's Whistleblower program continues to have a transformative impact on our enforcement program. The SEC's Office of the Whistleblower is currently tracking hundreds of matters in which a whistleblower's tip has caused a matter under investigation or an investigation to be opened, or which have been forwarded to Enforcement staff for consideration in connection with an existing investigation. The number of whistleblower tips received by the Commission has increased each year of the program's operation. In Fiscal Year 2016, the Commission received approximately 4, 200 whistleblower tips, representing a more than 40% increase over the number of tips received in Fiscal Year 2012, the first year for which the office had full-year data. In FY 2016, the Commission awarded more than $57 million to whistleblowers who provided original information that led to successful enforcement actions resulting in an order or monetary sanctions exceeding $1 million, and has awarded more than $111 million since the program's inception. Just this August, the Commission announced a $22 million award, its second largest, to a former company employee whose detailed tip and extensive assistance helped the agency halt a well-hidden wrongdoing at the company where the whistleblower worked. The Commission has also filed numerous "friend of the court" briefs in support of private actions by whistleblowers who have experienced retaliation for reporting internally at their companies, and has brought our own actions against firms for whistleblower retaliation and improper restrictions of whistleblowing activity in confidentiality agreements.

[6] In FY 2011, 2012, and 2013, the Enforcement Division charged 83, 90, 78, individuals in reporting and disclosure cases, respectively.

Preserving Investigative Tools

During my tenure as Chair, I have sought to work with Congress to modernize the Electronic Communications Privacy Act (ECPA), which governs the authority of law enforcement to obtain emails from internet service providers (ISPs). The bills currently pending in Congress to amend ECPA would unfortunately pose significant risks to the American investing public by impeding the ability of Commission staff to investigate and uncover insider trading, Ponzi schemes, and other types of fraud. Although I agree that ECPA's privacy protections and evidence collection procedures should be updated, I believe there are ways to update ECPA that offer stronger privacy protections and observe constitutional boundaries without putting innocent victims and our capital markets at risk.

As drafted, the bills would require government entities to obtain a criminal warrant when they seek the content of subscriber emails and other electronic communications from ISPs. The SEC, as a civil law enforcement agency, cannot obtain criminal warrants. Thus, the SEC would no longer be able to gather these communications directly from an ISP to obtain often critical and otherwise unobtainable evidence of serious wrongdoing. Any effort to update ECPA can, and should, be done without harming the ability of the SEC to protect our nation's citizens from securities fraud. I look forward to the opportunity to continue to work with Congress on solutions that both protect investors and privacy interests.[7]

Building Stronger, Safer Markets for Investors and Issuers

The SEC continues to pursue an extensive program of rulemaking and other policy efforts designed to ensure that our securities markets continue to optimally and securely serve investors and issuers. The SEC has significantly progressed in implementing mandatory rulemakings under three separate statutes, as well as in pursuing an impressive range of important discretionary initiatives.

As the Committee knows, the SEC and our fellow regulators have been working hard to strengthen our nation's financial systems by implementing the rules mandated by the Dodd-Frank Act, which responded to the worst financial crisis since the Great Depression. Over the last two years, the SEC has moved into the final phase of implementing the Dodd-Frank Act, focusing on completing all of the remaining rules in the two major remaining areas of mandates: security-based swaps and executive compensation.

Increasing Transparency and Oversight for Security-Based Swaps

Since 2014, we have passed major milestones in the establishment of a comprehensive regulatory framework for security-based swaps, which will give us powerful tools to oversee an approximately $11 trillion market. First, we finalized the core requirements for reporting

[7] *See* Letter from Mary Jo White, Chair, Kara Stein, Commissioner, Michael Piwowar Commissioner, U.S. Securities and Exchange Commission, to Charles Grassley, Chairman, United States Senate Committee on the Judiciary, dated May 11, 2016; and letter from Mary Jo White, Chair, U.S. Securities and Exchange Commission, to Patrick J. Leahy, Chairman, United States Senate Committee on the Judiciary, dated April 24, 2013.

security-based swap transactions to regulators and the public through security-based swap data repositories.[8] Second, we adopted the framework for registering security-based swap dealers and major security-based swap participants with the Commission,[9] as well as rules to help ensure that non-U.S. dealers participating in the U.S. market comply with our rules.[10]

Work is now underway to finalize all of the obligations that registered dealers and participants will be required to undertake. In April, the SEC adopted extensive requirements for how these entities must conduct business with counterparties – including special entities like municipalities and pension funds – and supervise such conduct.[11] We also this June finalized rules for timely and accurate trade acknowledgment and verification requirements for security-based swaps,[12] and we have proposed a process for dealing with bad actors in the security-based swap market.[13] Next in line will be to finalize that process, complete capital, margin, and asset segregation requirements for security-based swap entities,[14] and adopt rules for recordkeeping

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[8] *See* Release No. 34-74246, *Security-Based Swap Data Repository Registration, Duties, and Core Principles* (February 11, 2015), *available at* https://www.sec.gov/rules/final/2015/34-74244.pdf.; Release No. 34-74244, *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information* (February 11, 2015), *available at* https://www.sec.gov/rules/final/2015/34-74244.pdf; Release No. 34-78321, *Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information* (July 14, 2016), *available at* https://www.sec.gov/rules/final/2016/34-78321.pdf; and Release No. 34-78716, *Access to Data Obtained by Security-Based Swap Data Repositories* (August 29, 2016), *available at* https://www.sec.gov/rules/final/2016/34-78321.pdf. While not required for transaction reporting to commence, the Commission has also proposed a form and manner for how SDRs should make security-based swap data available to the Commission. *See* Release No. 34-76624, *Establishing the Form and Manner with which Security-Based Swap Data Repositories Must Make Security-Based Swap Data Available to the Commission* (December 11, 2015), *available at* https://www.sec.gov/rules/proposed/2015/34-76624.pdf;

[9] *See* Release No. 34-75611, *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants* (August 5, 2015), *available at* https://www.sec.gov/rules/final/2015/34-75611.pdf.

[10] *See* Release No. 34-77104, Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed By Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception (Feb. 10, 2016), *available at* https://www.sec.gov/rules/final/2016/34-77104.pdf; and Release No. 34-72472, *Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities* (June 25, 2014), *available at* https://www.sec.gov/rules/final/2014/34-72472.pdf.

[11] *See* Release No. 34-77617, *Business Conduct Standards for Security-Based Swap Dealers and Major Security Based Swap Participants* (April 14, 2016), *available at* https://www.sec.gov/rules/final/2016/34-77617.pdf.

[12] *See* Release No. 34-78011, *Trade Acknowledgment and Verification of Security-Based Swap Transactions* (June 8, 2016), *available at* https://www.sec.gov/rules/final/2016/34-78011.pdf.

[13] *See* Release No. 34-75612, *Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security-Based Swaps* (August 5, 2015), *available at* https://www.sec.gov/rules/proposed/2015/34-75612.pdf.

[14] *See* Release No. 34-68071, *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers* (October 18, 2012), *available at* https://www.sec.gov/rules/proposed/2012/34-68071.pdf.

and regulatory reporting, which we have targeted to complete by year-end.[15] With those steps, the regulatory structure for security-based swap dealers will be complete, a priority supported by me, the staff, and all of our Commissioners.[16]

Creating New Disclosures and Limits for Executive Compensation

With respect to executive compensation, the SEC last year issued proposals for all of the remaining executive compensation rulemakings required by the Dodd-Frank Act, including disclosure of whether a company allows executives to hedge the company's stock, disclosure of pay versus performance measures of executive compensation, and new disclosures and rules for clawing back incentive compensation erroneously awarded.[17] Together with five of our fellow financial regulators, we also re-proposed a joint rule and are working hard with those regulators to finalize the final rule regarding incentive-based compensation arrangements at large financial institutions.[18] And following the analysis of some 285,500 total comment letters, 1,500 of them unique, the final pay ratio rule was adopted in August 2015.[19]

Completing Implementation of the Dodd-Frank Act

Beyond these two areas, the SEC has continued to finish all of the mandates of the Dodd-Frank Act since I last testified. The Commission this June adopted rules to require resource extraction issuers to disclose payments made to the U.S. federal government or foreign governments for the commercial development of oil, natural gas, or minerals, a requirement under Section 1504 of the Dodd-Frank Act.[20] And, working with our colleagues at the FDIC, we

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[15] *See* Release No. 34-71958, *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers* (April 17, 2014), *available at* https://www.sec.gov/rules/proposed/2014/34-71958.pdf.

[16] *See* Commissioner Daniel M. Gallagher and Commissioner Michael S. Piwowar, *Statement Regarding Security-Based Swap Rules* (Sept. 25, 2015), *available at* https://www.sec.gov/news/statement/gallagher-piwowar-security-based-swaps.html; and Commissioner Kara M. Stein, *Remarks at the "SEC Speaks" Conference* (February 19, 2016), *available at* https://www.sec.gov/news/speech/stein-sec-speaks-2016.html.

[17] *See* Release No. 33-9723, *Disclosure of Hedging by Employees, Officers and Directors* (February 9, 2015), *available at* https://www.sec.gov/rules/proposed/2015/33-9723.pdf; Release No. 34-74835, *Pay Versus Performance* (April 29, 2015), *available at* https://www.sec.gov/rules/proposed/2015/34-74835.pdf; and Release No. 33-9861, *Listing Standards for Recovery of Erroneously Awarded Compensation* (July 1, 2015), *available at* https://www.sec.gov/rules/proposed/2015/33-9861.pdf.

[18] *See* Release No. 34-77776, *Incentive-based Compensation Arrangements* (May 6, 2016), *available at* https://www.sec.gov/rules/proposed/2016/34-77776.pdf.

[19] *See* Release No. 33-9877, *Pay Ratio Disclosure* (August 5, 2015), *available at* https://www.sec.gov/rules/final/2015/33-9877.pdf.

[20] *See* Release No. 34-78167, *Disclosure of Payments by Resource Extraction Issuers* (June 27, 2016), *available at* https://www.sec.gov/rules/final/2016/34-78167.pdf.

proposed joint rules for broker-dealers covered under the orderly liquidation provisions of Title II, as required by Section 205(h) of the Dodd-Frank Act.[21]

These accomplishments of the last year are, of course, only the latest in an historic undertaking by the agency to execute the most daunting rulemaking agenda in memory. Pursuant to mandates of the Dodd-Frank Act, since I arrived at the agency in April 2013, we have stood up an entirely new regulatory regime for municipal advisors,[22] and implemented sweeping changes in the securitization markets that were at the epicenter of the crisis – including the joint rulemaking on credit risk retention.[23] We significantly enhanced the rules for credit rating agencies,[24] strengthened the rules for how broker-dealers handle customer funds and securities,[25] disqualified bad actors from private offerings,[26] removed credit rating references from throughout our rules,[27] and, through the Volcker Rule, restricted proprietary trading by financial institutions.[28]

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[21] *See* Release No. 34-77157, *Covered Broker-Dealer Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (February 17, 2016), *available at* https://www.sec.gov/rules/proposed/2016/34-77157.pdf.

[22] *See* Release No. 34-70462, *Registration of Municipal Advisors* (September 30, 2013), *available at* https://www.sec.gov/rules/final/2013/34-70462.pdf.

[23] *See* Release No. 34-73407, *Credit Risk Retention* (October 22, 2014), *available at* https://www.sec.gov/rules/final/2014/34-73407.pdf; and Release No. 33-9638, *Asset-Backed Securities Disclosure and Registration* (September 4, 2014), *available at* https://www.sec.gov/rules/final/2014/33-9638.pdf.

[24] *See* Release No. 34-72936, *Nationally Recognized Statistical Rating Organizations* (August 27, 2014), *available at* https://www.sec.gov/rules/final/2014/34-72936.pdf.

[25] *See* Release No. 34-70073, *Broker-Dealer Reports* (July 30, 2013), *available at* https://www.sec.gov/rules/final/2013/34-70073.pdf. In addition, the Commission adopted amendments to the broker-dealer financial responsibility rules to enhance protections for customer assets, firm capital requirements, and risk management controls and proposed rules to provide investors with useful information about modern broker-dealer order handling practices. *See* Release No. 34-70072, *Financial Responsibility Rules for Broker-Dealers* (July 30, 2013), *available at* https://www.sec.gov/rules/final/2013/34-70072.pdf.

[26] *See* Release No. 33-9414, *Disqualification of Felons and Other "Bad Actors" from Rule 506 Offerings* (July 10, 2013), *available at* https://www.sec.gov/rules/final/2013/33-9414.pdf ("Bad Actor Rule").

[27] *See* Release No. IC-31828, *Removal of Certain References to Credit Ratings and Amendment to the Issuer Diversification Requirement in the Money Market Fund Rule* (September 16, 2015), *available at* https://www.sec.gov/rules/final/2015/ic-31828.pdf; Release No. IC-30847, *Removal of Certain References to Credit Ratings Under the Investment Company Act* (December 27, 2013), *available at* https://www.sec.gov/rules/final/2013/33-9506.pdf; and Release No. 34-71194, *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934* (December 27, 2013), *available at* https://www.sec.gov/rules/final/2013/34-71194.pdf.

[28] *See* Release No. BHCA-1, *Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds* (December 10, 2013), *available at* https://www.sec.gov/rules/final/2013/bhca-1.pdf; and Release No. BHCA-2, *Treatment of Certain Collateralized Debt Obligations Backed Primarily by Trust Preferred Securities with Regard to Prohibitions and Restrictions on Certain Interests in, and Relationships with, Hedge Funds and Private Equity Funds* (January 17, 2014), *available at* https://www.sec.gov/rules/interim/2014/bhca-2.pdf.

Facilitating Capital Formation for both Large and Small Issuers

The SEC performs a critical function for issuers seeking to raise capital to grow their businesses and the larger economy. Our rules seek to facilitate offerings by a diverse set of companies – large and small, engaged in all manner of commerce – while ensuring that investors have the protections they require to maintain confidence in the strongest capital markets in the world. Since I became Chair, the SEC has carried out this responsibility through a number of key initiatives, with particular emphasis on smaller businesses.

Completing Implementation of the JOBS Act and the FAST Act

The JOBS Act, in particular, made several significant changes to the avenues for capital formation in the securities markets, especially for smaller issuers, and we have now completed all of the rules mandated by that legislation. A few months after I became Chair, we finalized the changes to private offerings required by the JOBS Act, while advancing measures to ensure the agency has the information it needs to monitor the changes and protect investors, including adopting a rule that disqualifies certain felons and other "bad actors" from participating in private securities offerings made under Rule 506.[29] Last year, the SEC adopted final rules to update and expand Regulation A (commonly referred to as Regulation A+), an exemption from registration for small offerings of securities, to facilitate smaller companies' access to capital.[30] And we also finalized new rules to permit securities-based crowdfunding offerings by issuers and the operation of funding portals to intermediate such offerings.[31] Issuers are now actively using both of these new avenues for raising capital. As of September 30th, 114 companies had started crowdfunding offerings and 136 companies filed offering documents to use expanded Regulation A, and those that have completed their offerings reported raising $5.3 million through crowdfunding and $172 million through Regulations A.

The FAST Act was enacted by Congress late last year, requiring the SEC to undertake several more rulemakings and studies to promote capital formation and modernize disclosure. We have already made progress on implementing those mandates, adopting interim final rules to

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[29] *See* Release No. 33-9415, *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings* (July 10, 2013), *available at* https://www.sec.gov/rules/final/2013/33-9415.pdf; and Release No. 33-9416, Amendments to Regulation D, Form D and Rule 156 under the Securities Act (July 10, 2013), *available at* https://www.sec.gov/rules/proposed/2013/33-9416.pdf. On the same day, the Commission adopted rules to disqualify certain felons and other "bad actors" from participating in securities offerings made under Rule 506. *See* Bad Actor Rule, *supra* note 26.

[30] *See* Release No. 33-9741, *Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A)* (March 25, 2015), *available at* https://www.sec.gov/rules/final/2015/33-9741.pdf.

[31] *See* Release Nos. 33-9974; 34-76324, *Crowdfunding* (October 30, 2015), *available at* https://www.sec.gov/rules/final/2015/33-9974.pdf.

revise registration forms for emerging growth companies and smaller reporting companies,[32] and to permit issuers to include a summary in the annual report on Form 10-K.[33] Earlier this year, the SEC also approved amendments to revise the rules related to the thresholds for registration, termination of registration, and suspension of reporting under Section 12(g) of the Securities Exchange Act, implementing provisions of both the JOBS and the FAST Acts.[34] Staff has also completed a study and report on how to further modernize and simplify the Regulation S-K disclosure requirements as mandated by Section 72003 of the FAST Act .

Creating New Opportunities for Smaller Issuers

Since I last testified, the Commission has gone beyond the statutory mandates to develop and adopt a number of additional initiatives that are designed to facilitate capital formation, particularly for small businesses. Last month, for example, the Commission adopted final rules to modernize Rule 147, a safe harbor to a statutory exemption for intrastate securities offerings, and establish a new exemption, designated Rule 147A, to facilitate capital formation through intrastate offerings.[35] Many market participants and state regulators had raised concerns that the current requirements have not kept up with changes in the business environment and technology, which limits the usefulness of the safe harbor for capital-raising, especially for smaller state and local businesses. The new rules retain the key feature of existing Rule 147 – its intrastate character, which permits companies to raise money from investors within their state without concurrently registering the offers and sales at the federal level. In recognition of the transformative nature of the internet and other technologies, new Rule 147A removes the existing intrastate restriction on offers, but – critically for the state-based nature of the offering and its regulation – continues to require that sales be made only to residents of the state or territory of the issuer's principal place of business.[36]

Another important initiative is the pilot program to widen the minimum quoting and trading increments – or tick sizes – for stocks of some smaller companies. Following a study directed by the JOBS Act,[37] the Commission in May 2015 approved a proposal, submitted in

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[32] *See* Release No. 33-10003, *Simplification of Disclosure Requirements for Emerging Growth Companies and Forward Incorporation by Reference on Form S-1 for Smaller Reporting Companies* (January 13, 2016), *available at* https://www.sec.gov/rules/interim/2016/33-10003.pdf.

[33] *See* Release No. 34-77969, *Form 10-K Summary* (June 1, 2016), *available at* https://www.sec.gov/rules/interim/2016/34-77969.pdf.

[34] *See* Release No. 33-10075, *Changes to Exchange Act Registration Requirements to Implement Title V and Title VI of the JOBS Act* (May 3, 2016), *available at* https://www.sec.gov/rules/final/2016/33-10075.pdf.

[35] *See* Release No. 33-9973, *Exemptions to Facilitate Intrastate and Regional Securities Offerings* (October 30, 2015), *available at* https://www.sec.gov/rules/proposed/2015/33-9973.pdf.

[36] While the new rule can be used for any kind of intrastate offering meeting its conditions, at least 35 states have enacted some form of intrastate crowdfunding, and this rule could facilitate capital raising through those state provisions.

[37] *Report to Congress on Decimalization* (July 2012), *available at* https://www.sec.gov/news/studies/2012/decimalization-072012.pdf.

response to a Commission order,[38] by the national securities exchanges and the Financial Industry Regulatory Authority (FINRA) for a two-year pilot program.[39] The SEC plans to use the pilot program to assess whether wider tick sizes enhance the market quality of these stocks for the benefit of issuers and investors. The pilot began on October 3, 2016.[40]

More broadly, the Commission staff remains committed to helping small issuers use these channels and others to build their businesses using the securities markets. The Office of Small Business Policy within the Division of Corporation Finance provides extensive guidance to small businesses seeking to raise capital or comply with our reporting requirements. Each year, the office responds to over 1,500 requests for interpretive advice, provides guidance through speaking engagements, and meets frequently with interested parties about pending rulemakings that could impact small businesses. The Commission also renewed the Advisory Committee on Small and Emerging Companies to provide the Commission with advice on capital formation and reporting requirements for smaller issuers.[41]

Updating the Definition of an "Accredited Investor"

In another important step for modernizing the private offering market, the Commission published a staff report in December 2015 regarding the key definition of "accredited investor," which analyzes various approaches for modifying the definition and provides staff recommendations for potential updates and modifications.[42] The report recommends that the Commission consider expanding the definition to include alternative indicators for individuals to qualify as accredited investors (other than looking solely at income and net worth). The report also evaluates the impact that potential changes to the definition would have on the size of the accredited investor pool. I have directed the staff to prepare recommendations for the

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[38] *See* Release No. 34- 72460, *Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a Tick Size Pilot Plan* (June 24, 2014), *available at* https://www.sec.gov/rules/other/2014/34-72460.pdf.

[39] *See* Release No. 34-74892, *Joint Industry Plans; Order Approving the National Market System Plan to Implement a Tick Size Pilot Program by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc., as Modified by the Commission, For a Two-Year Period* (May 6, 2015), *available at* https://www.sec.gov/rules/sro/nms/2015/34-74892.pdf.

[40] On November 6, 2015, the Commission issued an exemption to the participants requiring implementation of the Tick Size Pilot until October 3, 2016. *See* Release No. 34-76382, Order Granting Exemption from Compliance with the National Market System Plan to Implement a Tick Size Pilot Program (November 6, 2015), *available at* https://www.sec.gov/rules/exorders/2015/34-76382.pdf.

[41] Information regarding the committee and its recommendations can be found at https://www.sec.gov/info/smallbus/acsec.shtml.

[42] *See Report on the Review of the Definition of "Accredited Investor"* (December 18, 2015), *available at* https://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf.

Commission on how the definition should be modified, and the comments we are receiving in response to the report will help inform the next steps.

Strengthening Markets with Targeted Action and Data-Driven Analysis

Since I last testified before this Committee, we have proceeded with our ongoing assessment of U.S. equity market structure to ensure that our markets remain the deepest, fairest, and most reliable in the world. It is important that our market structure is optimally serving investors and companies of all sizes seeking to raise capital. Our approach is data-driven and includes a number of identified short-term enhancements, as well as a comprehensive review of the entire structural operation of the equity markets to determine whether other changes should be made to optimize our markets for investors and issuers. The Commission staff has also continued to pursue significant initiatives with FINRA and the MSRB to enhance the structure of the fixed income markets, to enhance best execution obligations, and disclosure of mark-ups in certain principal transactions.

Preserving Operational Integrity in the Equity Markets

As I have remarked since my earliest days at the Commission,[43] a fundamental requirement of our modern equity markets is strong technological systems and operations. In November of 2014, the Commission adopted wide-ranging rules designed to strengthen the technology infrastructure of the U.S. securities markets.[44] The rules – together comprising Regulation SCI – impose requirements on certain key market participants intended to reduce the occurrence of systems issues and improve resiliency when systems problems do occur.

Our efforts to preserve the operational integrity of the market extend well beyond Commission rulemaking. In response to my requests,[45] the SROs have continued to work to address issues like order types and operations, data feed disclosures, and "single points of failure" within infrastructure systems that have the ability to significantly disrupt trading.[46] Most recently, the Commission approved new rules of the New York Stock Exchange, NYSE MKT,

[43] *See, e.g.,* Chair Mary Jo White, *Enhancing Our Equity Market Structure* (June 5, 2014) *available at* https://www.sec.gov/News/Speech/Detail/Speech/1370542004312 ("Chair White Market Structure Framework Speech"); Chair Mary Jo White, *Focusing on Fundamentals: The Path to Address Equity Market Structure*, (October 2, 2013), *available at* https://www.sec.gov/News/Speech/Detail/Speech/1370539857459; and Chair Mary Jo White, Statement on Meeting with Leaders of Exchanges (September 12, 2013), available at https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370539804861 ("Chair White Exchange Meeting Statement").

[44] *See* Release No. 34-73639, *Regulation Systems Compliance and Integrity* (November 19, 2014) ("Regulation SCI Adopting Release"), *available at* https://www.sec.gov/rules/final/2014/34-73639.pdf.

[45] *See, e.g.,* Chair White Market Structure Framework Speech and Chair White Exchange Meeting Statement, *supra* note 43.

[46] *See* Chair Mary Jo White, *The Continuous Process of Optimizing the Equity Markets* (June 2, 2016), *available at* https://www.sec.gov/news/speech/the-continuous-process-of-optimizing-the-equity-markets.html.

and Nasdaq that provide for closing contingency procedures for listed securities if the relevant exchange is unable to conduct a closing transaction in one or more securities due to a systems or technical issue.[47] All of the exchanges have now conducted and completed in-depth analyses of order types and have filed proposed rule changes to clarify the operation of their order types.[48] All of the exchanges have also now submitted rule filings disclosing how they use securities information processor (SIP) feeds and direct feeds.[49] These filings provide significantly improved transparency for investors and the public on how the exchanges operate. And, also at my request, the SIPs have implemented a time stamp in their data feeds, to facilitate greater transparency on the issue of data latency.[50] In this regard, it should also be noted that the SIPs

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[47] See *Release No. 34-78015, Notice of Filings of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1, to Provide for How the Exchanges Would Determine an Official Closing Price if the Exchanges are Unable to Conduct a Closing Transaction* (June 8, 2016), *available at* http://www.sec.gov/rules/sro/nyse/2016/34-78015.pdf ; Release No. 34-78014, *Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Establish Secondary Contingency Procedures for the Exchange's Closing Cross* (June 8, 2016), *available at* http://www.sec.gov/rules/sro/nasdaq/2016/34-78014.pdf.

[48] See Release Nos. 34-74796 (April 23, 2015), 80 Fed. Reg. 23,838 (April 29, 2015) (SR-NYSEArca-2015-08); 34-74738 (April 16, 2015), 80 Fed. Reg. 22,600 (April 22, 2015) (SR-BATS-2015-09); 34-74739 (April 16, 2015), 80 Fed. Reg. 22,567 (April 22, 2015) (SR-BYX-2015-07); 34-74558 (March 20, 2015), 80 Fed. Reg. 16,050 (March 26, 2015) (SR-NASDAQ-2015-024); 34-74618 (March 31, 2015), 80 Fed. Reg. 18,452 (April 6, 2015) (SR-Phlx-2015-29); 34-74617 (March 31, 2015), 80 Fed. Reg. 18,473 (April 6, 2015) (SR-BX-2015-015); 34-74439 (March 4, 2015), 80 Fed. Reg. 12,666 (March 10, 2015) (SR-EDGX-2015-08); 34-74435 (March 4, 2015), 80 Fed. Reg. 12,655 (March 10, 2015) (SR-EDGA-2015-10); 34-73468 (October 29, 2014), 79 Fed. Reg. 65,450 (November 4, 2014) (SR-EDGX-2014-18); 34-73592 (November 13, 2014), 79 Fed. Reg. 68937 (November 19, 2014) (SR-EDGA-2014-20); 34-73572 (November 10, 2014), 79 Fed. Reg. 68,736 (November 18, 2014) (SR-CHX-2014-18); 34-74678 (April 8, 2015), 80 Fed. Reg. 20,053 (April 14, 2015) (SR-NYSE-2015-15); and 34-74682 (April 8, 2015), 80 Fed. Reg. 20,043 (April 14, 2015) (SR-NYSEMKT-2015-22).

[49] *See* Release Nos. 34-72685 (July 28, 2014), 79 Fed. Reg. 44,889 (August 1, 2014) (SR-BATS-2014-029); 34-72687 (July 28, 2014), 79 Fed. Reg. 44926 (August 1, 2014) (SR-BYX-2014-012); 34-72682 (July 28, 2014), 79 Fed. Reg. 44,938 (August 1, 2014) (SR-EDGA-2014-17); 34-72683 (July 28, 2014), 79 Fed. Reg. 44,950 (August 1, 2014) (SR-EDGX-2014-20); 34-72711 (July 29, 2014), 79 Fed. Reg. 45,570 (August 5, 2014) (SR-CHX-2014-10); 34-72710 (July 29, 2014), 79 Fed. Reg. 45,511 (August 5, 2014) (SR-NYSE-2014-38); 34-72708 (July 29, 2014), 79 Fed. Reg. 45,572 (August 5, 2014) (SR-NYSEArca-2014-82); 34-72709 (July 29, 2014), 79 Fed. Reg. 45,513 (August 5, 2014) (SR-NYSEMKT-2014-62); 34-72684 (July 28, 2014), 79 Fed. Reg. 44956 (August 1, 2014) (SR-NASDAQ-2014-072); 34-72713 (July 29, 2014), 79 Fed. Reg. 45,544 (August 5, 2014) (SR-Phlx-2014-49); 34-72712 (July 29, 2014), 79 Fed. Reg. 45,521 (August 5, 2014) (SR-BX-2014-037); 34-74074 (January 15, 2015), 80 Fed. Reg. 3,679 (January 23, 2015) (SR-BATS-2015-04); 34-74075 (January 15, 2014), 80 Fed. Reg. 3,693 (January 23, 2015) (SR-BYX-2015-03); 34-74076 (January 15, 2014), 80 Fed. Reg. 3,674 (January 23, 2015) (SR-EDGA-2015-02); 34-74072 (January 15, 2015), 80 Fed. Reg. 3,282 (January 22, 2015) (SR-EDGX-2015-02); 34-74357 (February 24, 2015), 80 Fed. Reg. 11252 (March 2, 2015) (SR-CHX-2015-01); 34-74410 (March 2, 2015), 80 Fed. Reg. 12,240 (March 6, 2015) (SR-NYSE-2015-09); 34-74409 (March 2, 2015), 80 Fed. Reg. 12,221 (March 6, 2015) (SR-NYSEArca-2015-11); 74408 (March 2, 2015), 80 Fed. Reg. 12,225 (March 6, 2015) (SR-NYSEMKT-2015-11); and 34-74690 (April 9, 2015), 80 Fed. Reg. 20282 (April 15, 2015) (SR-NASDAQ-2015-033).

[50] *See* Release No. 34-75505, *Joint Industry Plan; Order Approving Amendment No. 35 to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis Submitted by the BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc.,*

have steadily upgraded their systems to reduce average latencies from nearly one second a decade ago to less than 1/1000th of a second today.[51]

Another important component of this effort is ensuring that the moderators put in place in 2012 to address extraordinary volatility in the market work well. And the SEC and the SROs are actively reviewing the operation of the limit up-limit down pilot plan, with a focus on issues that occurred during the volatile trading of August 24, 2015.[52] This review has included extensive public analysis by SEC staff of that day's events and the consideration of specific improvements to refine the plan's operation.[53]

Implementing Targeted Initiatives to Optimize Equity Market Structure

The Commission is also taking action to address enhanced equity market transparency and disclosure, including our proposal issued in November 2015 to update disclosures by alternative trading systems (ATSs),[54] and in July the Commission proposed amendments to Rules 605 and 606 of Regulation NMS to modernize those rules.[55] Updating Rules 605 and 606 will provide investors with important new information about broker-dealer order handling practices, empowering them to better assess the routing decisions of broker-dealers.

International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (July 22, 2015), *available at* https://www.sec.gov/rules/sro/nms/2015/34-75505.pdf; and Release No. 34-75505, Order Approving the Twenty Second Substantive Amendment to the Second Restatement of the CTA Plan and Sixteenth Substantive Amendment to the Restated CQ Plan (July 22, 2015), *available at* https://www.sec.gov/rules/sro/nms/2015/34-75504.pdf.

[51] *See, e.g.,* Release No. 34-70010, Notice of Filing and Immediate Effectiveness of the Nineteenth Charges Amendment to the Second Restatement of the CTA Plan and Eleventh Charges Amendment to the Restated CQ Plan (July 19, 2013), *available at* https://www.sec.gov/rules/sro/nms/nmsarchive/nms2013.shtml.

[52] *See* Release No. 34-77679, Order Approving the Tenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility by Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Chicago Stock Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (April 21, 2016), *available at* https://www.sec.gov/rules/sro/nms/2016/34-77205.pdf.. *See also* Testimony of Stephen Luparello, Director, Division of Trading and Markets, SEC, before the United States Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment (March 3, 2016), *available* at https://www.sec.gov/news/testimony/testimony-regulatory-reforms-to-improve-equity-market-structure.html.

[53] *See* Research Note: Equity Market Volatility on August 24, 2015 (December 2015), *available at* https://www.sec.gov/marketstructure/research/equity_market_volatility.pdf.

[54] *See* Release No. 34-76474, *Regulation of NMS Stock Alternative Trading Systems* (November 18, 2015), *available at* https://www.sec.gov/rules/proposed/2015/34-76474.pdf.

[55] See Release No. 34-78309, *Disclosure of Order Handling* Information (July 13, 2016), *available at* *https://www.sec.gov/rules/proposed/2016/34-78309.pdf*.

The Commission's proposal on Regulation ATS, issued last November, would require ATS platforms that trade national market system (NMS) stocks to provide significant new transparency with respect their operations. In the years since Regulation ATS was first adopted in 1998, our equity markets have undergone significant change. ATSs are now an important component of our current market structure, fueled by advancements in technology and competing directly with exchanges. Consequently, the number of trading centers has increased substantially, trading activity in NMS stocks is less concentrated, and ATSs collectively now account for approximately 15% of the dollar volume in NMS stocks. This proposal, marking the first-ever major update of Regulation ATS, would require new detailed disclosures about the operation of these platforms and would create a new process for Commission oversight of them. And, I recently announced that I have directed staff to develop recommendations for the Commission to consider the application of Regulation SCI and Regulation ATS to platforms that trade government securities.[56]

In addition to enhancing the transparency of our market for investors, the Commission has also advanced measures to improve our core regulatory tools of registration and firm oversight. In March 2015, for example, the Commission proposed important amendments to Rule 15b9-1 to require broker-dealers that engage in off-exchange proprietary trading to become members of a national securities association, which would enhance oversight of active proprietary trading firms.[57] The staff also continues to make progress on recommendations to the Commission to address, among other things, the registration status of certain active proprietary traders, improvements to firms' risk management of trading algorithms, and an anti-disruptive trading rule that would address the use of aggressive, destabilizing trading strategies in vulnerable market conditions.[58]

Assessing Further Data-Driven Enhancements to Equity Market Structure

The Commission's continuing work in market structure is a comprehensive undertaking that requires updates in technology, and utilization of data and analytics to make informed decisions on enhancing market structure. That means new ways of using existing market data through tools like the Market Information Data Analytics System (MIDAS),[59] and it also means building new systems to provide even more powerful analytical capabilities for the Commission and our fellow regulators. The Commission is expected to consider this afternoon a final plan from the SROs to create a consolidated audit trail that will allow regulators to track all activity in U.S. markets in National Market System (NMS) securities.[60] This is a substantial undertaking

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[56] *Supra* note 46.

[57] *See* Release No. 34-74581, *Exemption for Certain Exchange Members* (March 25, 2015), *available at* https://www.sec.gov/rules/proposed/2015/34-74581.pdf.

[58] *See* Chair White Market Structure Framework Speech, *supra* note 43.

[59] Information regarding MIDAS may be found at https://www.sec.gov/marketstructure/midas.html.

[60] *See* Release No. 34-77724, *Joint Industry Plan; Notice of Filing of the National Market System Plan Governing the Consolidated Audit Trail by BATS Exchange, Inc., BATS-Y Exchange, Inc., BOX Options Exchange LLC, C2*

and will result in very sophisticated financial databases, providing a full lifecycle of all orders and transactions in our equity and options markets. Once a final plan is approved, Commission Rule 613 requires the selection of a plan processor within two months to build, operate and maintain the consolidated audit trail. Data is set to be reported by the exchanges and FINRA within one year of Commission approval.

In early 2015, as part of our broader market structure work, the Commission established the Equity Market Structure Advisory Committee to provide a formal mechanism through which the Commission can receive advice and recommendations on key equity market structure issues from a diverse group of experts.[61] The Committee as a whole has since met six times to consider issues such as the operation of Regulation NMS, the impact of access fees and rebates widely used by stock exchanges and the regulatory structure of trading venues, and the impact of various market structure issues on customers. The Committee has established subcommittees to look more closely at specific issues identified by the SEC staff and Committee members before presenting them to the full Committee for discussion and deliberation. The Committee at its July 8, 2016, meeting recommended that the Commission propose a pilot program to adjust the access fee cap under Rule 610, consider rulemaking to make changes to NMS plan governance, and consider issuing guidance regarding implementation timelines for proposed SRO rule changes, including publication of technical specifications. The staff and the Committee will continue to use a variety of tools to ensure both the transparency of the Committee's consideration of issues and input from the full range of investors and other interested market participants, including coordination with our Investor Advisory Committee.

Deepening Oversight of the Fixed Income Markets

Fixed income market structure has long been a focus at the Commission, and the continued impact of technology, regulation, and other forces require us to deepen our oversight. In particular, as I have remarked before, technology in the fixed income markets may not be deployed today to achieve all of the benefits it could for investors, including the broad availability of pre-trade pricing information, lower search costs, and greater price competition.[62]

Options Exchange, Incorporated, Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, ISE Gemini, LLC, Miami International Securities Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc. (April 27, 2016), *available at* https://www.sec.gov/rules/sro/nms/2016/34-77724.pdf.

[61] Information regarding the committee and its ongoing work can be found at https://www.sec.gov/spotlight/equity-market-structure-advisory-committee.shtml. *See also* Chair Mary Jo White, *Optimizing our Equity Market Structure: Opening Remarks at the Inaugural Meeting of the Equity Market Structure Advisory Committee* (May 13, 2015), *available at* https://www.sec.gov/news/statement/optimizing-our-equity-market-structure.html.

[62] *See* Chair Mary Jo White, *Intermediation in the Modern Securities Markets: Putting Technology and Competition to Work for Investors* (June 20, 2014) ("Chair White Fixed Income Speech"), *available at* http://www.sec.gov/News/Speech/Detail/Speech/1370542122012.

One important step is to ensure that the best execution and pricing disclosure rules for the corporate bond and municipal securities markets are robust and useful to investors, and FINRA and the MSRB have moved forward on such reforms. At the Commission's urging,[63] the MSRB in December 2014 adopted a best execution rule for the municipal bond market similar to FINRA's best execution rule.[64] And both SROs have since developed and published additional guidance on the best execution obligations of broker-dealers and municipal securities dealers.[65] In 2014, I also urged both FINRA and the MSRB to move forward on markup and markdown disclosure rules, a reform also publicly supported by my fellow Commissioners.[66] Both have submitted proposals for markup and markdown disclosure to the SEC for approval, and SEC staff is evaluating comments received on those proposals.[67]

A related effort in these markets is enhancing pre-trade price transparency. Work on this initiative is underway at the SEC. Pre-trade transparency for corporate bonds and municipal securities should remain a critical objective, and the Commission staff continues to work through the challenging issues inherent in such a transformative market structure change. The staff's immediate goal is to develop a carefully considered recommendation for the Commission's consideration.

The initiatives in these markets also include interagency work on the U.S. Treasury market in the wake of the events of October 15, 2014.[68] One important priority for the Treasury

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[63] *See SEC Report on the Municipal Securities Markets* (July 31, 2012), *available at* http://www.sec.gov/news/studies/2012/munireport073112.pdf.

[64] *See* MSRB Rule G-18 (Best Execution); Release No. 34-73764, *Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change Consisting of Rule G-18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G-48, on Transactions with Sophisticated Municipal Market Professionals ("SMMP"), and Rule D-15, on the Definition of SMMP* (December 5, 2014), *available at* https://www.sec.gov/rules/sro/msrb/2014/34-73764.pdf.

[65] *See* MSRB Implementation Guidance on MSRB Rule G-18, on Best Execution (November 2015), *available at* http://www.msrb.org/~/media/Files/MISC/Best-Ex-Implementation-Guidance.ashx?la=en; and FINRA Regulatory Notice 15-46 (November 2015), *available at* https://www.finra.org/sites/default/files/notice_doc_file_ref/Notice_Regulatory_15-46.pdf.

[66] *See, e.g.*, Chair White Fixed Income Speech, *supra* note 62; and Commissioners Kara M. Stein and Michael S. Piwowar, *Statement on Edward D. Jones Enforcement Action* (August 13, 2015), *available at* http://www.sec.gov/news/statement/statement-on-edward-jones-enforcement-action.html.

[67] *See* Exchange Act Release No. 34-78573 (Aug. 15, 2016), *available at* https://www.sec.gov/rules/sro/finra/2016/34-78573.pdf; Exchange Act Release No. 34-78777 (Sep. 7, 2016), *available at* https://www.sec.gov/rules/sro/msrb/2016/34-78777.pdf.

[68] *See* Chair Mary Jo White, U.S. Securities and Exchange Commission, *Prioritizing Regulatory Enhancements for the U.S. Treasury Market*, Keynote Address at the Evolving Structure of the U.S. Treasury Market Second Annual Conference, Federal Reserve Bank of New York (Oct. 24, 2016) ("Chair White 2016 Treasury Market Speech"), *available at* https://www.sec.gov/news/speech/white-keynote-us-treasury-market-conference-102416.html; *Joint Staff Report: The U.S. Treasury Market on October 15, 2014* (July 13, 2015), *available at* https://www.treasury.gov/press-center/press-releases/Documents/Joint_Staff_Report_Treasury_10-15-2015.pdf; Department of Treasury, *Notice Seeking Public Comment on the Evolution of the Treasury Market* (January 22,

market is developing a mechanism for post-trade transparency for regulators, which systems operated by FINRA and the MSRB already provide in the corporate and municipal markets. Last month, the Commission approved a groundbreaking FINRA rule that will for the first time provide regulators with transaction data for the U.S. Treasury market from participants that are FINRA members.[69] The Federal Reserve Board also announced its intention to collect transaction data from banks. This regulatory transparency will provide regulators with information critical to a deeper understanding of the U.S. Treasury market operations. And as discussed at length at the recent Treasury market conference at the Federal Reserve Bank of New York, regulators are beginning to consider appropriate steps to provide public transparency of U.S. Treasury market transactions.

In addition to these initiatives, I announced recently that the SEC is also focused on strengthening the foundational regulatory regime for Treasury market intermediaries and working with FINRA as it evaluates the application of its rules to the government securities market.[70] In addition, with respect to the regulation of dealers, I have asked SEC staff to consider further clarifying how conduct of active proprietary trading firms in the equity and government securities markets may trigger dealer registration requirements. Finally, while FINRA has already begun applying its rules to this market, including the recent regulatory trade reporting regime and rules governing mark-ups and commissions,[71] FINRA staff also expects to recommend to its Board of Governors in the first quarter of 2017 that a range of important conduct provisions be applied to the government securities market.[72]

Strengthening Other Critical Market Infrastructures

Clearing agencies provide vital services to both the equity and fixed income markets every day, and it is vital that the clearance and settlement cycle continue to work effectively and efficiently as the markets grow in size and complexity. The Commission this September adopted new rules to enhance the oversight of clearing agencies that are deemed to be systemically

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2016), *available at* https://www.treasury.gov/press-center/press-releases/Documents/Market%20Structure%20RFI%20Final.pdf.

[69] *See* Release No. 34-79116, *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Reporting of Transactions in U.S. Treasury Securities to TRACE* (Oct. 18, 2016), *available at* https://www.sec.gov/rules/sro/finra/2016/34-79116.pdf.

[70] *See* Chair White 2016 Treasury Market Speech, *supra* note 68.

[71] *See* Exchange Act Release No. 34-76639, *Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change to Amend FINRA Rule 0150 to Apply FINRA Rule 2121 and its Supplementary Material .01 and .02 to Transactions in Exempted Securities That Are Government Securities* (Dec. 14, 2015), *available at* https://www.sec.gov/rules/sro/finra/2015/34-76639.pdf.

[72] *See* Letter from Robert Cook, President and Chief Executive Officer of FINRA, to Stephen Luparello, Director of the Division of Trading and Markets dated October 17, 2016, *available at* https://www.sec.gov/divisions/marketreg/letter-from-finra-regulation-of-us-treasury-securities.pdf and http://www.finra.org/sites/default/files/FINRA-Comment-Letter-SEC-10-17-16.pdf.

important or that are involved in complex transactions, such as security-based swaps.[73] These rules will guard against systemic risk that can arise in the clearance and settlement system, and provide certainty to market participants, especially those engaged in cross-border activities. In addition, also this September, the Commission proposed an amendment to Rule 15a6-1(a) of the Exchange Act to shorten the standard settlement cycle for most broker-dealer transactions from three business days after the trade date ("T+3") to two business days after the trade date ("T+2"). The proposed amendment is designed to reduce the risks that arise from the value and number of unsettled securities transactions prior to the completion of settlement, including credit, market, and liquidity risk directly faced by U.S. market participants.[74] I and my fellow Commissioners have expressed strong support for this effort,[75] and it is an important measure for the Commission to advance in coordination with the broader SRO and industry efforts underway.

Last year, again with broad support from all of the Commissioners,[76] the SEC also took the first major step to modernize the regulation of transfer agents in decades, issuing an advance notice of proposed rulemaking, concept release, and request for comment on the full regulatory regime.[77] It is important that this work progress so that the integral work of these market participants continues to serve investors and issuers.

[73] *See* Release No. 34-78961, *Standards for Covered Clearing Agencies* (September 28, 2016), *available at* https://www.sec.gov/rules/final/2016/34-78961.pdf. The Commission also proposed to expand these standards to cover other registered clearing agencies. *See* Release No. 34-78963, *Definition of "Covered Clearing Agency"* (September 28, 2016).

[74] *See* Release No. 34-78962, *Amendment to Securities Transaction Settlement Cycle*, *available at* *https://www.sec.gov/rules/proposed/2016/34-78962.pdf.*

[75] *See* Letter from Mary Jo White, Chair, U.S. Securities and Exchange Commission, to Kenneth E. Bentsen, Jr., President and CEO, Securities Industry and Financial Markets Association and Paul Schott Stevens, President and CEO, Investment Company Institute, dated September 16, 2015, *available at* *https://www.sec.gov/divisions/marketreg/chair-white-letter-to-sifma-ici-t2.pdf*; Commissioners Michael S. Piwowar and Kara M. Stein, *Statement Regarding Proposals to Shorten the Trade Settlement Cycle*, (June 29, 2015), *available at* https://www.sec.gov/news/statement/statement-on-proposals-to-shorten-the-trade-settlement-cycle.html; Commissioner Michael S. Piwowar, *Statement at Open Meeting: Shortening the Settlement Cycle* (September 28, 2016), *available at* https://www.sec.gov/news/statement/piwowar-statement-open-meeting-092816.html; Commissioner Kara M. Stein, *Statement on the Proposed Rule Amendment to Shorten the Transaction Settlement Cycle* (September 28, 2016), *available at* https://www.sec.gov/news/statement/stein-second-statement-open-meeting-092816.html.

[76] *See, e.g.*, Chair Mary Jo White, *Beyond Disclosure at the SEC in 2016* (Feb. 19, 2016), *available at* http://www.sec.gov/news/speech/white-speech-beyond-disclosure-at-the-sec-in-2016-021916.html. *See also* Commissioners Michael Piwowar and Kara Stein Statement of Support for the Need to Modernize the Commission's Transfer Agent Rules (June 11, 2015), *available at* http://www.sec.gov/news/statement/statement-of-support-modernize-sec-transfer-agent-rules.html.

[77] *See* Release No. 34-76743, *Transfer Agent Regulations* (December 22, 2015), *available at* https://www.sec.gov/rules/concept/2015/34-76743.pdf.

Making Disclosure More Effective for Investors and Issuers

Another important ongoing initiative is our review of the effectiveness of disclosure for investors and issuers. Following the issuance of the Regulation S-K study required by the JOBS Act,[78] I directed the staff to review comprehensively our disclosure regime for corporate issuers and develop specific recommendations for updating the requirements.[79] As with the many efforts undertaken by my predecessors in this area, the objective is to improve the disclosure regime for investors and companies, based on input from both investors – about the type of information they want and how it can be best presented – and companies.

This is a comprehensive undertaking and the staff is reviewing the disclosure requirements in phases. In the first phase of the review, the staff is focusing on the business and financial disclosures required by periodic and current reports, Forms 10-K, 10-Q and 8-K, and updates to certain Industry Guides, including Guides 3 and 7. In September 2015, the Commission issued a request for comment for certain financial reporting and disclosure requirements in Regulation S-X.[80] Then, in April 2016, the Commission issued a major concept release that seeks input on modernizing certain business and financial disclosure requirements in Regulation S-K for the benefit of investors and companies.[81] We have already received a number of helpful comment letters on the concept release, which discusses many issues and questions that will also serve as a basis for the study of our disclosure requirements mandated by the FAST Act. Finally, more recently, in August 2016, the Commission issued a request for comment on disclosure requirements in Regulation S-K relating to management, certain security

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[78] *See Report on Review of Disclosure Requirements in Regulation S-K* (December 2013), *available at* https://www.sec.gov/news/studies/2013/reg-sk-disclosure-requirements-review.pdf.

[79] *See* Chair Mary Jo White, *The Path Forward on Disclosure* (October 14, 2013), *available at* https://www.sec.gov/News/Speech/Detail/Speech/1370539878806; and Chair Mary Jo White, *The SEC in 2014* (January 27, 2014), *available at* https://www.sec.gov/News/Speech/Detail/Speech/1370540677500.

[80] *See* Release No. 33-9929, *Request for Comment on the Effectiveness of Financial Disclosures about Entities other than the Registrant* (September 25, 2015), *available at* https://www.sec.gov/rules/other/2015/33-9929.pdf. Regulation S-X contains disclosure requirements that dictate the form and content of financial statements to be included in filings with the Commission. It addresses both registrant financial statements and financial statements of certain entities other than the registrant. It also requires that domestic issuer financial statements filed with the Commission be prepared in accordance with generally accepted accounting principles.

[81] *See* Release No. 33-10064, *Business and Financial Disclosure Required by Regulation S-K* (April 13, 2016) ("S-S-K Concept Release"), *available at https://www.sec.gov/rules/concept/2016/33-10064.pdf.* Regulation S-K is the central repository for the Commission's non-financial disclosure requirements. It is intended to foster uniform and integrated disclosure for registration statements under the Securities Act, registration statements under the Securities Exchange Act, and periodic and current reports filed under the Exchange Act. In July 2015, the Commission issued a concept release about possible revisions to audit committee disclosures. *See* Release No. 33-9862, *Possible Revisions to Audit Committee Disclosures* (July 1, 2015), *available at* https://www.sec.gov/rules/concept/2015/33-9862.pdf.

holders, and corporate governance matters,[82] and proposed rule and form amendments that would require registrants to include a hyperlink to exhibits in their filings.[83]

While we continue to study these comments as part of our comprehensive review, the Commission has also sought to identify and address discrete areas where updates to our disclosure requirements are now needed. In June 2016, for example, we proposed rules to modernize the Commission's disclosure requirements and policies for mining properties by aligning them with current industry and global regulatory practices and standards.[84] Then, in July, the Commission proposed amendments to eliminate redundant, overlapping, outdated, or superseded disclosure provisions, in light of subsequent changes to Commission disclosure rules, accounting principles, and technology.[85] A range of different stakeholders, including investors and issuers, have expressed support for removing redundancies and outdated provisions in certain disclosure requirements, a topic that was also highlighted again by the FAST Act. Accordingly, based on a thorough review of Commission rules, U.S. Generally Accepted Accounting Principles, and International Financial Reporting Standards, the proposal identifies a number of areas where disclosure requirements may be redundant, duplicative, or overlapping — or where requirements may have been superseded by changes made previously. The staff is also considering whether disclosure requirements should be further scaled for certain categories of issuers and, in June 2016, the Commission proposed amendments to the definition of "small reporting company" that would expand the number of companies eligible for the scaled disclosure available to that category of issuers.[86] But, as with any complex and detailed framework, we must carefully consider each aspect of the rules under review for potential changes, and we will ultimately be informed by investors, issuers, and other stakeholders on whether any particular change is appropriate.

Importantly, the staff is also considering how companies file their disclosures and is exploring alternatives that could enhance the way that investors access the disclosures. This component of our initiative is of vital importance as technology and investors' needs and behavior evolve. In the near term, we are working on changes to SEC.gov that would make EDGAR filings more accessible to investors and easier for them to navigate. We also continue to work to improve the technology behind EDGAR and SEC.gov, most recently in June by

[82] *See* Release No. 33-10198, *Request for Comment on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters* (August 25, 2016), *available at* https://www.sec.gov/rules/other/2016/33-10198.pdf.

[83] *See* Release No. 33-10201, *Exhibit Hyperlinks and HTML Format* (August 31, 2016), *available at* https://www.sec.gov/rules/proposed/2016/33-10201.pdf.

[84] *See* Release No. 33-10098, *Modernization of Property Disclosures for Mining Registrants* (June 16, 2016), *available at* https://www.sec.gov/rules/proposed/2016/33-10098.pdf.

[85] *See* Release No. 33-10110, *Disclosure Update and Simplification* (July 13, 2016), *available at* https://www.sec.gov/rules/proposed/2016/33-10110.pdf.

[86] *See* Release No. 33-10107, *Amendments to Smaller Reporting Company Definition* (June 27, 2016), *available at* https://www.sec.gov/rules/proposed/2016/33-10107.pdf.

allowing filers to voluntarily submit eXtensible Business Reporting Language data inline as part of their core filings to facilitate easier access to, and analysis of, information.[87]

Another important new part of this ongoing review of disclosure effectiveness is to expand it to cover investment companies. Last May, I directed staff in the Division of Investment Management to undertake a disclosure effectiveness initiative of their own to consider ways to improve the form, content, and delivery of funds' disclosures.[88] Staff is in the early stages of prioritizing areas of focus, but I expect they will include ways to leverage advances in technology to improve the presentation and delivery of disclosures and ways to enhance disclosure about fund strategies, investments, risks, and fees.

Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry

We have also already made significant progress on the Commission's major undertaking to enhance risk monitoring and regulatory safeguards for the asset management industry, which I announced in December 2014.[89] This effort, which comprises five core initiatives addressing funds' evolving portfolio composition risks and operational risks, follows the fundamental reforms to money market funds proposed and adopted during my tenure, which came into effect on October 14, 2016. [90]

The Commission has adopted several rules and proposed others to implement four of the five initiatives I announced in late 2014. First, last month, the Commission adopted new rules and forms as well as amendments to its rules and forms to modernize the reporting and disclosure of information by registered investment companies.[91] The adopted rules will require registered funds to provide portfolio-wide and position-level holdings data to the Commission on a monthly basis, as well as report annually on certain census-type information that reflects current information needs. This data will be reported in a structured data format, which will improve the ability of the Commission and the public both to aggregate and analyze information across all funds and to link the reported information with information from other sources. In a

[87] *See* Release No. 34-78041, *Order Granting Limited and Conditional Exemption Under Section 36(a) of the Securities Exchange Act of 1934 from Compliance with Interactive Data File Exhibit Requirement in Forms 6-K, 8-K, 10-Q, 10-K, 20-F and 40-F to Facilitate Inline Filing of Tagged Financial Data* (June 13, 2016), *available at* http://www.sec.gov/rules/exorders/2016/34-78041.pdf.

[88] *See* Chair Mary Jo White, *The Future of Investment Company Regulation* (May 20, 2016), *available at* https://www.sec.gov/news/speech/white-speech-keynote-address-ici-052016.html.

[89] *See* Chair Mary Jo White, *Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry* (December 11, 2014), *available at* https://www.sec.gov/News/Speech/Detail/Speech/1370543677722.

[90] *See* Release No. IC-31166, *Money Market Fund Reform; Amendments to Form PF* (July 23, 2014), *available at* https://www.sec.gov/rules/final/2014/33-9616.pdf.

[91] See Release No. 33-10231, *Investment Company Reporting Modernization* (October 13, 2016) *available at* https://www.sec.gov/rules/final/2016/33-10231.pdf.

related effort, in August 2016, the Commission adopted amendments to the Investment Advisers Act rules and to Form ADV, the primary investment adviser reporting and disclosure form, that among other things: (1) provides additional information regarding advisers, including information about their separately managed account business; and (2) addresses issues that staff has identified since the Commission made significant changes to Form ADV in 2011.[92]

To advance the second initiative in this area, regarding enhanced liquidity management, the Commission also adopted last month a new rule that will require mutual funds and other open-end investment companies, including ETFs, to adopt and implement liquidity management programs.[93] These funds will also be required to provide enhanced disclosure regarding their liquidity and redemption practices, the methods used by funds to meet redemptions, their committed lines of credit, and inter-fund borrowing and lending. In addition, mutual funds (except money market funds or ETFs) will be permitted to use "swing pricing,"[94] which would also require additional disclosures.

In December 2015, the Commission advanced the third initiative by proposing a rule that would impose new requirements on the use of derivatives by open and closed-end funds and business development companies.[95] Funds would be required to comply with one of two alternative portfolio limitations designed to limit the amount of leverage that a fund may obtain through derivatives and certain other transactions. In addition, funds would be subject to asset segregation requirements to manage risks associated with derivatives transactions, as well as year-end expected requirements to establish risk management programs for their derivatives activities.

On June 28, 2016, the Commission advanced the fourth initiative by proposing a rule that would require investment advisers registered with the Commission to create and maintain transition plans to prepare for a major disruption in their business[96]. SEC staff is also developing

[92] *See* Release No. IA-4509, *Amendments to Form ADV and Investment Advisers Act Rules* (August 25, 2016), *available at* https://www.sec.gov/rules/final/2016/ia-4509.pdf. For example, the adopted amendments will require investment advisers to provide additional information regarding their separately managed account business, including aggregate data related to the use of borrowings and derivatives, and information about other aspects of their advisory business, including branch office operations and the use of social media. In addition, the amendments will facilitate streamlined registration and reporting for groups of private fund adviser entities operating a single advisory business.

[93] *See* Release Nos. 33-10233; IC-32315, *Investment Company Liquidity Risk Management Programs* (October 13, 2016, *available at* https://www.sec.gov/rules/final/2016/33-10233.pdf.

[94] *See* Release Nos. 33-10234; IC-32316, Investment Company Swing Pricing (October 13, 2016), available at https://www.sec.gov/rules/final/2016/33-10234.pdf. Swing pricing is the process of reflecting in a fund's net asset value the costs associated with the trading activity of the fund occasioned by shareholders' redemptions and purchases in order to reflect those costs in the prices paid and received by purchasing and redeeming shareholders.

[95] *See* Release No. IC-31933, *Use of Derivatives by Registered Investment Companies and Business Development Companies* (December 11, 2015), *available at* https://www.sec.gov/rules/proposed/2015/ic-31933.pdf.

[96] *See* Release No. IA-4439, *Adviser Business Continuity and Transition Plans* (June 28, 2016), *available at* https://www.sec.gov/rules/proposed/2016/ia-4439.pdf.

a recommendation that the Commission propose new requirements for stress testing by large investment advisers and large investment companies, the final initiative I outlined in 2014. Such rules would implement, in part, requirements under section 165(i) of the Dodd Frank Act.

Beyond this broad program for enhancing our oversight of the asset management industry, last year, I asked the staff to prepare a recommendation to the Commission for proposed rules requiring independent compliance assessments for registered investment advisers, which could further promote compliance with our rules for asset managers. The assessments would not replace examinations conducted by OCIE, but would be designed to improve overall compliance by registered investment advisers. I have forwarded the staff's recommendations to my two fellow Commissioners.

Section 913 of the Dodd-Frank Act granted the Commission authority to adopt rules to establish a uniform fiduciary standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers. As I have stated previously, my evaluation of the differences in the standards that apply to advice under the federal securities laws has led me to conclude that broker-dealers and investment advisers should be subject to a uniform fiduciary standard of conduct when providing personalized investment advice about securities to retail investors. I recognize that this is a complex issue, and that there are significant challenges that will need to be addressed in proposing a uniform fiduciary standard, including how to define the standard, how it would affect current business practices, and the nature of the potential effects on investors, particularly retail investors.

SEC staff has developed a framework for this rulemaking that has been provided to the Commission for its consideration. As part of its analysis in developing its recommendations, the staff is considering, among other things, the SEC staff's 2011 study under Section 913 of the Dodd-Frank Act,[97] the response to the request for information from March 2013,[98] the additional views of investors and other interested market participants, and the potential economic and market impacts. Ultimately, of course, the Commission as a whole will decide whether to proceed with a rulemaking to implement a uniform fiduciary standard and its parameters.

Prioritizing Cybersecurity

Cybersecurity is – as I have said before[99] – one of the greatest risks facing the financial services industry and will be for the foreseeable future. Cybersecurity risks can have far-reaching impacts, and robust and responsible safeguards for market participants and investors' information must be maintained. The Commission has been proactive in publicly

[97] *See Study on Investment Advisers and Broker-Dealers* (January 2011), *available at* https://www.sec.gov/news/studies/2011/913studyfinal.pdf.

[98] *See* Release Nos. 34-69013 and IA-3558, *Duties of Brokers, Dealers, and Investment Advisers* (March 1, 2013), *available at* https://www.sec.gov/rules/other/2013/34-69013.pdf.

[99] *See, e.g.*, Chair Mary Jo White, *Opening Statement at SEC Roundtable on Cybersecurity* (March 26, 2014), *available at* https://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370541286468.

prioritizing awareness of cyber risks and in examining and enforcing the rules we oversee that relate to cybersecurity.[100]

Our own regulatory efforts are focused primarily on ensuring that our registered entities have policies and procedures to address the risks posed to their systems and data by cyberattacks. In the asset management space, staff from the Division of Investment Management issued guidance that discussed a number of measures that funds and advisers should consider.[101] We are also are keeping close watch on how public companies are addressing the issue in accordance with the 2011 guidance issued by the Division of Corporation Finance.[102]

On the exam front, the staff is building on its successful "cybersweep" from last year, and will focus on cybersecurity compliance and controls in 2016 as well.[103] This year's efforts involved more testing to assess firms' preparedness and implementation of firms' procedures and controls. Also, last November marked the compliance date for most entities covered by Regulation SCI, which, as noted above, covers certain key market participants – including exchanges, large ATSs, clearing agencies, and others.[104] In particular, Regulation SCI requires those entities to have comprehensive policies and procedures in place surrounding their technological systems to make them more resilient. It also requires those entities to report disruptions in their technology systems to the SEC promptly. The first set of exams of SCI entities with respect to these requirements have been underway since June.

Last May I added a Senior Advisor for Cybersecurity Policy to my staff, who has deep expertise in cybersecurity and will continue to enhance our coordinated approach to cybersecurity policy across the SEC and engage at the highest levels with market participants and other agencies. While all disruptions from cybersecurity events cannot be prevented, we continue to explore ways to ensure that our regulated entities consider the full range of cybersecurity risks to their businesses and consider and use appropriate tools and procedures to prevent breaches, detect attacks, and limit harm.

Yesterday, the SEC hosted the Fintech Forum, a public forum to discuss financial technology (Fintech) innovation in the financial services industry. The goal of the forum was to foster greater collaboration and understanding among regulators, entrepreneurs, and industry experts into Fintech innovation and evaluate how the current regulatory environment can most effectively address these new technologies. The Forum was divided into four panels in which

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[100] General information about these activities can be found at https://www.sec.gov/spotlight/cybersecurity.shtml.

[101] *See Cybersecurity Guidance*, Investment Management Guidance Update No. 2015-02 (Apr. 2015), *available at* https://www.sec.gov/investment/im-guidance-2015-02.pdf.

[102] *See* CF Disclosure Guidance: Topic No. 2, *Cybersecurity* (October 13, 2011), *available at* https://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm.

[103] *See also* National Exam Program, Risk Alert: Vol. IV, Issue 8, *OCIE's 2015 Cybersecurity Examination Initiative* (Sep. 15, 2015), *available at* https://www.sec.gov/ocie/announcement/ocie-2015-cybersecurity-examination-initiative.pdf.

[104] *See* SCI Adopting Release, *supra* note 44.

the participants discussed the impact of recent innovation in investment advisory services; the impact of recent innovation on trading, settlements, and clearance activities; the impact of recent innovation on capital formation; and investor protection in the fintech era.

Strengthening Compliance with Risk-Based Examinations

As I know the Committee appreciates, the Office of Compliance Inspections and Examinations (OCIE) plays a critical role in protecting investors and the integrity of our capital markets. OCIE examiners focus on conducting risk-based examinations of registered entities, including broker-dealers, investment advisers, investment companies, national securities exchanges, SROs, transfer agents, and clearing agencies to evaluate their compliance with applicable regulatory requirements. This work is essential to address deficiencies directly with registrants and, more broadly, to improve industry compliance, detect and prevent fraud, inform policy, and identify risks.

OCIE continues to bolster its risk-based approach by using data analytics to identify activities that may warrant examination as well as deploying technology to make examinations more efficient and targeted. OCIE's Quantitative Analytics Unit has, for example, developed and continues to improve a National Exam Analytic Tool, which allows examiners to analyze huge amounts of trading data in minutes. These efforts and others have enhanced our ability to reach more registrants, and more effectively use our limited examination resources. In FY 2016, OCIE conducted more than 2,400 examinations of registrants, an increase over each of the prior seven fiscal years.

In furtherance of its risk-based approach, OCIE publishes its annual public statement of examination priorities to inform investors and registrants about areas that the staff believes present heightened risk. The examination priorities are selected through a collaborative process in which OCIE's senior management and senior representatives of other SEC Divisions and Offices worked side-by-side to analyze and perform a risk-based assessment of information from a number of sources. In 2016, OCIE's stated priorities include ETFs, fee selection practices at investment advisers and dual registrants, variable annuities, retail retirement issues, clearing agencies, cybersecurity, and Regulation SCI compliance. In March 2016, OCIE created a new Office of Risk and Strategy to consolidate and streamline OCIE's risk assessment, market surveillance, and quantitative analysis teams and provide operational risk management and organizational strategy for OCIE.

Deploying technology and the risk-based approaches as described above is imperative and helpful, but they do not and cannot produce sufficient exam coverage. I remain concerned that we do not have the resources to adequately examine the vast and growing registered investment adviser population, of which there are approximately 12,200. The Commission has therefore taken additional steps to prioritize our limited examination resources to better cover investment advisers. In fiscal year 2016, OCIE conducted more than 1,400 examinations of investment advisers, more examinations than any of the previous seven years. OCIE has also made significant enhancements to its examination program for advisers, including hiring additional industry experts, strengthening its examiner training program and increasing its use of advanced quantitative techniques. However, despite these efforts and in light of rapid growth in the adviser population, OCIE was only able to examine approximately 11% of advisers in fiscal year 2016. These advisers manage more than 35% of assets under management.

This level of coverage cannot be allowed to persist. After exploring a number of additional measures, effective October 1, 2016, OCIE has transitioned resources from its broker-dealer examination program to its program for investment advisers and investment companies. Together with the new hires permitted by our Congressional appropriations, we have increased the investor advisor and investment company OCIE staff by approximately 20% from FY 2015 levels. Significantly more resources are needed to fulfill our responsibility to investors.

Investing in People and Technology for a Smarter, Stronger Commission

Since becoming Chair, the Commission has continued its hard work to enhance its internal operations. The investing public depends on the staff of the Commission and our public systems each day to navigate the securities markets, and it is important that we continue to work to improve the quality of both. For example, we have made increasing investments in information security to improve risk management and monitoring and modernize and secure the SEC's infrastructure. The agency is also engaged in an ongoing, multi-year effort to simplify and optimize the financial reporting process through EDGAR to promote automation and reduce filer burden. With a more modern EDGAR, both the investing public and SEC staff will benefit from having improved access to better data. The steps over the last few years to modernize *SEC.gov* have also continued to improve one of the most widely used federal government websites, making it more flexible, informative, easier to navigate, and secure.

Technology also continues to be the bedrock for much of our ongoing enforcement and examination effort, creating efficiencies and capabilities that were previously impossible. In the last two years, our initiatives have included:

- *Expanding data analytic tools* that assist in the integration and analysis of huge volumes of financial market data, employing algorithms and quantitative models that can lead to earlier detection of fraud or suspicious behavior and ultimately enabling the agency to allocate its resources more effectively. For example, SEC staff has used data analytic (including pattern recognition) tools to, among other things, detect potential fraudulent or manipulative trading, identify financial statement outliers or unusual trends indicative of possible accounting fraud, discover possible money laundering, sift through massive volumes of trading data to detect suspicious trading patterns, and flag higher risk registrants for examination prioritization.

- *Enhancing the Tips, Complaints, and Referral system (TCR)* to bolster its flexibility, configurability, and adaptability. TCR investments will provide more flexible and comprehensive intake, triage, resolution tracking, searching, and reporting functionalities, with full auditing capabilities.

- *Improving enforcement investigation and litigation tracking* to better handle the substantial volume of materials produced during investigations and litigation. Among other initiatives, the SEC plans to enhance its ability to electronically transfer large amounts of data; implement a document management system for Enforcement's internal case files; and revamp the tools used to collect and analyze trading data from market participants.

Of course, none of these achievements, including those made possible by enhanced technology, would be possible without the hard work and dedication of the extraordinary women and men who work at the SEC. Our human capital strategy is built to ensure that we continue to attract and retain talented, engaged, and productive employees that reflect the constantly evolving markets we oversee. In 2014, the Partnership for Public Service named the SEC as the most improved agency in the Best Places to Work in Government annual awards for 2014.[105] And in 2015, the SEC rose to #10 on the Best Places to Work among mid-size agencies list in their annual survey based on the results of our Federal Employee Viewpoint Survey.[106] That trend continued in 2016, as reflected by our very positive results in the most recent Federal Employee Viewpoint Survey results. We ranked 3rd among 37 large federal agencies in Global Satisfaction and 6th in Employee Engagement. In addition, the SEC experienced the largest increases among all large federal agencies in both indices versus 2015, with a 9% increase Global Satisfaction and a 6% increase in Employee Engagement. While these improvements are impressive, we remain committed to fostering an even better and stronger workplace to serve the country's investors and its markets.

Striving for Continued Excellence and Meeting New Challenges

In recent years, the SEC has made great strides forward in fulfilling its critical mission. As discussed earlier, the agency has set new records for enforcement cases and examinations, strengthened its operations and programs, completed most of its Congressionally mandated rulemakings, and advanced other mission critical policy objectives. Improvements to the agency's technology and operations also have made the SEC more efficient and effective. These achievements were made possible by the additional resources Congress has provided in recent fiscal years, and the hard work of the SEC staff who have used them effectively. Although we are very pleased with this significant progress, challenges remain and additional resources are needed to permit the agency to fulfill its many obligations to investors and the markets.

The markets and registrants we oversee have grown exponentially. We now oversee approximately 28,000 market participants and selectively review the disclosures and financial statements of over 9,000 reporting companies. From 2001 to 2015, assets under management of SEC-registered advisers more than tripled from approximately \$21.5 trillion to approximately \$66.8 trillion, and assets under management of mutual funds more than doubled from \$7 trillion to over \$15 trillion. Trading volume in the equity markets from 2001 through 2015 nearly tripled to over \$70 trillion. And, as this Committee knows, the SEC's responsibilities have also significantly increased, with new or expanded responsibilities for security-based swaps, hedge fund and other private fund advisers, credit rating agencies, municipal advisors, clearing agencies, and crowdfunding portals.

The SEC's budget requests for FYs 2017 and 2018 are intended to:

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[105] *See* Partnership for Public Service, *The Big Picture: Profiles of Notable Movers, available at* http://bestplacestowork.org/BPTW/rankings/profiles#sec.

[106] *See* Partnership for Public Service, *Best Places to Work Agency Rankings, available at* http://bestplacestowork.org/BPTW/rankings/overall/mid.

- Strengthen our examination coverage of investment advisers;
- Continue the agency's investments in the technologies needed to keep pace with today's high-tech, high-speed markets and market participants;
- Further bolster our core enforcement functions to detect, investigate, and prosecute wrongdoing;
- Continue the agency's emphasis on economic and risk analysis to support rulemaking and oversight; and
- Enhance the agency's oversight of rapidly changing markets and ability to carry out its increased regulatory responsibilities, including by hiring additional market and quantitative experts.

Because the SEC's budget is offset by matching collections of fees on securities transactions, the funding levels the SEC is requesting will not impact the deficit or the amount of funding available for other agencies.

For FY 2018, the SEC's authorization request totals $2.227 billion, a $445 million increase over the FY 2017 request. This level would help the SEC implement our new responsibilities, more effectively oversee the rapidly changing markets the SEC regulates, and continue to modernize the agency's information technology tools and infrastructure. Also, as described further below, the request includes the funds necessary to begin a prospectus-level procurement with the General Services Administration (GSA) in order to acquire a new headquarters lease.

The current leases for the SEC's headquarters buildings (Station Place I, II, and III) will expire in FY 2019, 2020, and 2021. In accordance with the memorandum of understanding (MOU) between the GSA and the SEC, we have begun work with GSA to begin the procurement process for a new headquarters lease. The SEC is working collaboratively with GSA to develop a package of materials to submit through the prospectus lease process. We have been informed by GSA that the SEC must be prepared to obligate the funds necessary for the build out of a new headquarters, if relocation is required, before a new lease can be executed. GSA's current schedule calls for a new lease to be executed in FY 2018. Thus, the SEC's FY 2018 authorization request reflected the GSA's estimate at that time for the build-out of which would cover expenses for construction, IT cabling and equipment, security-related equipment, and appropriate GSA fees were we required to re-locate. The estimate will continue to be refined as the prospectus lease process unfolds.

Under the core FY 2018 request, the SEC would continue to place a high priority on hiring additional examiners as part of the agency's multi-year effort to increase coverage of investment advisers. This market segment is the fastest growing registrant population we oversee and its growth in size and complexity has continued to outpace the growth of the agency's examination staff. A decade ago, there were approximately 9,000 advisers registered with the Commission, managing $28 trillion in assets. For FY 2017, OCIE projects that these figures will grow to 12,500 advisers managing more than $70 trillion in assets. During the last ten years, the number of SEC examiners relative to adviser assets under management decreased from approximately 17 examiners per trillion dollars of assets to 8 examiners per trillion dollars. In FY 2016, due to enhancements to the examination workforce and technology tools, the SEC staff set a new record for the number of adviser exams performed in one year. However, due to continued growth in the industry, the examination rate remained at approximately 11% of registered advisers. These advisers manage more than 35% of assets under management. The FY 2018 request would continue our efforts to increase our examination rate of the investment adviser industry to be more comparable to that achieved by other financial entity regulators.

The agency also would seek to bolster the Enforcement Division's workforce in order to continue to support its three core functions: intelligence analysis, investigation, and litigation. Specifically, the Enforcement Division would use these resources to:

- help collect, analyze, triage, refer, monitor, and follow through on the thousands of tips that the SEC receives from whistleblowers and others;
- deploy additional experienced investigative and trial attorneys, accountants, and industry experts; and
- aggressively litigate against securities law violators.

Technology remains a crucial component of our strategy for pursuing wrongdoing, and the SEC intends to continue investing in data analytics, litigation support, and other tools critical for the Division of Enforcement.

The SEC would also use FY 2018 funds to hire additional economists and other analysts to bolster economic and risk analysis in support of rulemaking and oversight. In addition, the agency would focus on hiring additional staff in the Divisions of Trading and Markets and Investment Management to strengthen oversight of key market segments such as derivatives markets, clearing agencies, and investment companies. In particular, the SEC would use FY 2018 funds to enhance the agency's oversight of the fixed income markets. For example, the Commission would use these funds to implement appropriate market structure reforms in the Treasury and corporate bond markets. The SEC also remains focused on cybersecurity risk in the markets and market participants and would use FY 2018 funds to continue to build a robust framework to gauge broad based market risk and assist in strengthening examination programs for registrants, including those required by Regulation SCI, to determine cybersecurity maturity, capabilities and risk profiles.

Building on the progress made over the past several years to modernize our technology systems, the SEC will continue its emphasis on leveraging technology to strengthen operations and increase the effectiveness of our programs. Similar to the FY 2017 request, the FY 2018 request proposes full use of the SEC Reserve Fund, to support the continued implementation of a number of key technology initiatives, including enhanced risk and data analysis, EDGAR redesign, enforcement and examination support, and business process improvements. These key priorities will enhance the SEC's ability to augment service to registrants and the public, integrate and analyze large amounts of data, and improve SEC business and operation processes.

It is critical that we have the resources necessary to discharge our responsibilities, both the new ones and the many others we have long held in the face of a growing and ever-more sophisticated financial services industry. I deeply appreciate the serious charge we have to be prudent stewards of the funds we are appropriated, and we strive to demonstrate how seriously we take that obligation by the work we do. At the same time, the cuts and limitation to the SEC's budget that some have proposed would imperil the progress we have made and our ability to fulfill our mission. Only with Congress' continued assistance can we continue to successfully execute our mission to protect investors, preserve the integrity of our markets, and promote capital formation. We very much appreciate the Committee's support.

Conclusion

The Commission's extensive work to protect investors, preserve market integrity, and promote capital formation goes beyond the initiatives and policies I have discussed. But I have tried by example to convey the breadth and importance of the Commission's ongoing efforts and provide a sense of the agency's work both since my time as Chair and since I last testified before this Committee. While more remains to be achieved, I am very proud of the agency's significant accomplishments across its many areas of critical responsibilities. For that, I want to thank first and foremost the exceptional staff of the SEC, as well as my fellow Commissioners, present and past. They richly deserve the praise and confidence of investors and the markets.

In closing, I also want to thank the Chairman, the Ranking Member, and this Committee as a whole for your support of the agency's mission. Your continued support will allow the Commission to better protect investors and facilitate capital formation, more effectively oversee the markets and entities we regulate, and continue to build upon the significant progress we have achieved.

I am happy to answer any questions that you may have.

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STATEMENT OF THE

NATIONAL ASSOCIATION OF REALTORS®

SUBMITTED FOR THE RECORD TO THE

THE UNITED STATES HOUSE OF REPRESENTATIVES FINANCIAL SERVICES COMMITTEE

HEARING TITLED

"MODERNIZING APPRAISALS: A REGULATORY REVIEW AND THE FUTURE OF THE INDUSTRY"

NOVEMBER 16, 2016

Introduction

The National Association of REALTORS® (NAR) thanks the House Financial Services Committee for holding this important hearing. Appraisals provide an independent and impartial analysis of local housing markets, and a credible opinion of the value of a house. This analysis is a critical component of the home mortgage transaction, helping to ensure the buyer is paying a fair market value for the property, and that the lender is fully informed when determining loan terms. NAR represents a wide variety of housing industry professionals, including approximately 30,000 licensed and certified appraisers, committed to the development and preservation of the nation's housing stock and making it available to the widest range of potential homebuyers. Proper regulation of the appraisal industry is necessary to ensure safety and soundness in the nation's housing market.

Federally Related Transactions

NAR firmly supports maintaining the current de minimus requirement for federally related transactions, in which real estate appraisals are required for real estate loans with a transaction value equal to or greater than $250,000. According to NAR's research, in 2015, there were 1,591,357 existing single-family homes sold for between $250,000 and $500,000. This equals about 30% of the total home sales in 2015. Compared to that number, only 632,509 existing single-family homes sold for over $500,000 in 2015. In addition, only 5 out of 180 U.S. metropolitan areas had a median existing single-family home value above $500,000. Increasing the appraisal threshold to $500,000, which some in the industry have suggested, would severely reduce the number of appraisals required in residential real estate transactions in many communities, putting into question the safety and soundness of those transactions, as well as the well-being of neighborhoods in which those loans are made.

NAR is concerned about the varying quality of valuation tools used by lenders for transactions that fall outside of the federal requirements for an appraisal. Some of the on-line automated valuation tools available today are not sophisticated enough to be relied on for an accurate valuation of real property. Should the appraisal threshold be raised, lenders relying on these estimating tools could be severely under- or over-estimating a property's value in a number of real estate transactions. NAR believes that there should be qualified appraiser oversight of all review processes that meet Uniform Standards of Professional Appraisal Practice review guidelines. Computer generated materials and check lists can complement an appraisal review, but should not act as substitutes for a licensed or certified appraiser's opinion.

Raising the appraisal threshold level would likely increase the levels of risk lending institutions have to manage. When the Government Accountability Office (GAO) investigated this issue[1], GAO found no support for raising the current threshold. Rather, GAO reported that many stakeholders supported the reduction or elimination of current threshold levels, helping to improve risk

[1] "REAL ESTATE APPRAISALS: Appraisal Subcommittee Needs to Improve Monitoring Procedures." GAO-12-147: Published: Jan 18, 2012. Publicly Released: Jan 18, 2012. *Available at* http://www.gao.gov/assets/590/587735.pdf.

management and providing better consumer protection. Increasing the appraisal threshold levels would undermine the health of the real estate lending industry as a whole.

Appraiser Qualifications

NAR firmly believes in the continuing need for competent, professional appraisers. Persons who perform appraisals of real property must be licensed or certified by their respective state regulatory agency. Appraisers follow the minimum education, experience, and examination requirements for real property appraisers to obtain a state license or certification. Appraisal competency requires a true understanding of the valuation process and is developed over time through training and experience.

In December 2011, the Appraiser Qualifications Board (AQB) adopted revisions to the *Real Property Appraiser Qualification Criteria* to require a Bachelor's degree or higher for Certified General and Certified Residential classifications. The new education requirement went into place on January 1, 2015. College degrees are costly and time-consuming. NAR is concerned that the wages earned as an appraiser are not an incentive for an individual to enter the profession after paying for a four-year college degree, especially when a graduate must do a multi-year internship that is often unpaid. The degree requirement also disadvantages workers who already have thousands of hours of appropriate on-the-job training and could be great candidates to take the certified general or certified residential exam without completing a four-year degree. The AQB should count years of experience in the appraisal profession under a trainee license to qualify for at least part of the four-year college degree requirement. Many very good existing Certified General and Certified Residential appraisers do not have four-year degrees. These same appraisers have successfully mentored many others to follow in the profession with the highest standards.

Regulatory Structure

NAR is committed to responsible valuation principles and to ensuring a regulatory framework that supports credible, independent valuations of real property because credible independent valuations of real property are critical to the health of the overall real estate industry. As such, NAR supports and promotes the mission and vision of the Appraisal Foundation[2] which promotes professionalism and ensures public trust in the valuation profession through the promulgation of the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser qualifications (AQB), and guidance regarding valuation methods and techniques. NAR supports USPAP as the national valuation standard. Additionally, the NAR Code of Ethics requires REALTORS® who provide appraisal services, to conform to the standards of practice expected in that specific real estate discipline. NAR believes that appraisal standards should be uniform across the United States and territories, and does not support efforts to dilute USPAP or layer on additional sets of valuation standards.

[2] NAR is an affiliate sponsor of the Appraisal Foundation.

Federal and Conventional Programs

Over the past year, many appraisers became wary of participating in Federal Housing Administration (FHA) insured home loan transactions due to concern and confusion over appraisal requirement changes in the FHA Single Family Housing Policy Handbook. Specific rules that required appraisers to test appliances resulted in many appraisers increasing their fees for FHA appraisals. Some appraisers even stopped taking on any FHA appraisals, or asked for additional home inspections to comply with the Handbook requirements. NAR members voiced serious concern that the entire transaction had become costlier and time-consuming; hindering an FHA borrower's ability to compete in today's housing markets. In response to those concerns, FHA recently announced updates to the Handbook that clarifies this requirement. According to the new guidance, appraisers must simply note that certain appliances contributing to the market value of the property are physically present rather than requiring an appraiser to operate the appliances.

However, there are still improvements to be made in both the Handbook and FHA's general policy on appraisals. In particular, NAR has great concern over the requirement that an appraisal stays with a property for 120 days for any FHA transaction. This policy harms both buyers and sellers in rapidly changing markets, hindering economic recovery in certain neighborhoods across the country. By removing the requirement, FHA will help foster home-ownership and ensure borrowers who rely on FHA financing pay the fair and accurate market value for their home.

Recently, both Fannie Mae and Freddie Mac announced programs that would allow for the use of automated valuation tools in the place of traditional appraisals for certain mortgages. NAR is engaged with both entities on this matter and will monitor and assess these programs as they progress. NAR urges caution with regards to any programs that rely solely on automated valuations, but will not be making a definitive statement at this time on Fannie Mae and Freddie Mac's initiatives pending further review.

Conclusion

Thank you for the opportunity to submit these comments. NAR looks forward to working with committee members and the rest of Congress to maintain the safety and soundness of the appraisal industry while advancing growth in the appraisal field.

The Washington Post

TRUMP: A TRUE STORY

David A. Fahrenthold and Robert O'Harrow Jr.
August 10, 2016

The lawyer gave Donald Trump a note, written in Trump's own handwriting. He asked Trump to read it aloud.

Trump may not have realized it yet, but he had walked into a trap.

"Peter, you're a real loser," Trump began reading.

The mogul had sent the note to a reporter, objecting to a story that said Trump owned a "small minority stake" in a Manhattan real estate project. Trump insisted that the word "small" was incorrect. Trump continued reading: "I wrote, 'Is 50 percent small?' "

"This [note] was intended to indicate that you had a 50 percent stake in the project, correct?" said the lawyer.

"That's correct," Trump said.

For the first of many times that day, Trump was about to be caught saying something that wasn't true.

LAWYER: Mr. Trump, do you own 30 percent or 50 percent of the limited partnership?
TRUMP: I own 30 percent.

It was a mid-December morning in 2007 — the start of an interrogation unlike anything else in the public record of Trump's life.

Trump had brought it on himself. He had sued a reporter, accusing him of being reckless and dishonest in a book that raised questions about Trump's net worth. The reporter's attorneys turned the tables and brought Trump in for a deposition.

For two straight days, they asked Trump question after question that touched on the same theme: Trump's honesty.

The lawyers confronted the mogul with his past statements — and with his company's internal documents, which often showed those statements had been incorrect or invented. The lawyers were relentless. Trump, the bigger-than-life mogul, was vulnerable — cornered, out-prepared and under oath.

Thirty times, they caught him.

Trump had misstated sales at his condo buildings. Inflated the price of membership at one of his golf clubs. Overstated the depth of his past debts and the number of his employees.

That deposition — 170 transcribed pages — offers extraordinary insights into Trump's relationship with the truth. Trump's falsehoods were unstrategic — needless, highly specific, easy to disprove. When caught, Trump sometimes blamed others for the error or explained that the untrue thing really *was* true, in his mind, because he saw the situation more positively than others did.

"Have you ever lied in public statements about your properties?" the lawyer asked.

"I try and be truthful," Trump said. "I'm no different from a politician running for office. You always want to put the best foot forward."

In his presidential campaign, Trump has sought to make his truth-telling a selling point. He nicknamed his main Republican opponent "Lyin' Ted" Cruz. He called his Democratic opponent, Hillary Clinton, "A PATHOLOGICAL LIAR!" in a recent Twitter message. "I will present the facts plainly and honestly," he said in the opening of his speech at the Republican National Convention. "We cannot afford to be so politically correct anymore."

Trump has had a habit of telling demonstrable untruths during his presidential campaign. The Washington Post's Fact Checker has awarded him four Pinocchios — the maximum a statement can receive — 39 times since he announced his bid last summer. In many cases, his statements echo those in the 2007 deposition: They are specific, checkable — and wrong.

Trump said he opposed the Iraq War at the start. He didn't. He said he'd never mocked a disabled New York Times reporter. He had. Trump also said the National Football League had sent him a letter, objecting to a presidential debate that was scheduled for the same time as a football game. It hadn't.

Last week, Trump claimed that he had seen footage — taken at a top-secret location and released by the Iranian government — showing a plane unloading a large amount of cash to Iran from the U.S. government. He hadn't. Trump later conceded he'd been mistaken — he'd seen TV news video that showed a plane during a prisoner release.

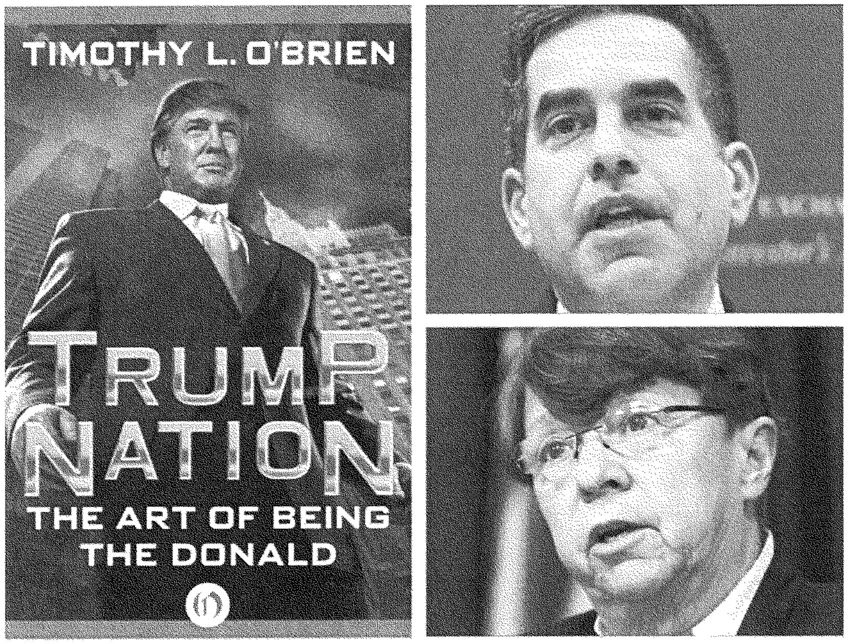
But, even under the spotlight of this campaign, Trump has never had an experience quite like this deposition on Dec. 19 and 20, 2007.

He was trapped in a room — with his own prior statements and three high-powered lawyers.

"A very clear and visible side effect of my lawyers' questioning of Trump is that he [was revealed as] a routine and habitual fabulist," said Timothy L. O'Brien, the author Trump had sued.

The Washington Post sent the Trump campaign a detailed list of questions about this deposition, listing all the times when Trump seemed to have been caught in a false or unsupported statement. The Post asked Trump whether he wanted to challenge any of those findings — and whether he had felt regret when confronted with them.

He did not answer those questions.



LEFT: Timothy L. O'Brien's book "Trump Nation: The Art of Being the Donald." RIGHT: Andrew Ceresney, top, and Mary Jo White, left, who represented O'Brien in the suit Trump brought against him. (Open Road Integrated Media; Mark Lennihan/AP; Seth Wenig/AP)

In 2005, O'Brien, then a reporter for the New York Times, had published a book called "Trump Nation: The Art of Being the Donald." In the book, O'Brien cited people who questioned a claim at the bedrock of Trump's identity — that his net worth was more than $5 billion. O'Brien said he had spoken to three people who estimated that the figure was between $150 million and $250 million.

Trump sued. He later told The Post that he intended to hurt O'Brien, whom he called a "lowlife sleazebag."

"I didn't read [the book], to be honest with you. . . . I never read it. I saw some of the things they said," Trump said later. "I said: 'Go sue him. It will cost him a lot of money.' "

By filing suit, Trump hadn't just opened himself up to questioning — he had opened a door into the opaque and secretive company he ran.

O'Brien's attorneys included Mary Jo White, now the chair of the Securities and Exchange Commission, and Andrew Ceresney, now the SEC's director of enforcement. The lawsuit had given them the power to request that Trump turn over internal company documents, and they used it. They arrived at the deposition having already identified where Trump's public statements hadn't matched the private truth.

The questions began with that handwritten note and the 50 percent stake that wasn't 50 percent.

"The 30 percent equates to much more than 30 percent," Trump explained. His reasoning was that he had not been required to put up money at the outset, so his 30 percent share seemed more valuable.

"Are you saying that the real estate community would interpret your interest to be 50 percent, even though in limited partnership agreements it's 30 percent?" Ceresney asked.

"Smart people would," Trump said.

"Smart people?"

"Smart people would say it's much more than 30 percent."

TRUMP INFLATES THE NUMBERS

TRUMP: I got more than a million dollars, because they have tremendous promotion expenses, to my advantage. In other words, they promote, which has great value, through billboards, through newspapers, through radio, I think through television - yeah, through television.
And they spend - again, I'd have to ask them, but I bet they spend at least a million or two million or maybe even more than that on promoting Donald Trump.
LAWYER: But how much of the payments were cash?
TRUMP: Approximately $400,000.
LAWYER: So when you say publicly that you got paid more than a million dollars, you're including in that sum the promotional expenses that they pay?
TRUMP: Oh, absolutely, yes. That has a great value. It has a great value to me.
LAWYER: Do you actually say that when you say you got paid more than a million dollars publicly?
TRUMP: I don't break it down.

On to the next one.

"I was paid more than a million dollars," Trump said when Ceresney asked how much he'd been paid for a speech in 2005 at New York City's Learning Annex, a continuing-education center.

Ceresney was ready.

"But how much of the payments were cash?"

"Approximately $400,000," Trump said.

Trump said his personal math included the intangible value of publicity: The Learning Annex had advertised his speech heavily, and Trump thought that helped his brand. Therefore, in his mind he'd been paid more than $1 million, even though his actual payment was $400,000.

"Do you actually say that, when you say you got a million dollars publicly?" Ceresney asked.

"I don't break it down," Trump said.

As the deposition went on, the lawyers led Trump through case after case in which he'd overstated his success.

The lawyer played a clip from Larry King's talk show, in which King asked Trump how many people worked for him. "Twenty-two thousand or so," Trump said.

"Are all those people on your payroll?" Ceresney asked him.

"No, not directly," Trump said. He said he was counting employees of other companies that acted as suppliers and subcontractors to his businesses.

Another one. In O'Brien's book, Trump had been quoted saying: "I had zero borrowings from [my father's] estate. . . . I give you my word."

Under oath:

"Mr. Trump, have you ever borrowed money from your father's estate?"

"I think a small amount a long time ago," Trump said. "I think it was like in the $9 million range."

Another one. In one of his own books, Trump had said about one of his golf courses: "Membership costs $300,000. I think it's a bargain."

Under oath:

"In fact, your memberships were not selling at $300,000 at that time, correct?"

"We've sold many for two hundred" thousand, Trump said. Then, Trump pushed it upward: "We've sold many for, I think, two-fifty."

But this was not the place to push it.

The lawyer had an internal Trump document that showed the true figure — "$200,000 per membership," Ceresney said.

"Correct," Trump acknowledged. "Right."

TRUMP PASSES THE BLAME

LAWYER: You didn't correct it when you read the book?
TRUMP: Well, I did correct it, and she didn't correct it.

But you could have her in as a witness, and I'm sure we'll bring her in as a witness because what she wrote was — I asked her to change it to "billions of dollars in debt," and she probably forgot.

LAWYER: And when you read it, you didn't correct it?

TRUMP: I didn't see it.

LAWYER: You didn't see it.

TRUMP: I read it very quickly. I didn't see it. I would have corrected it, but I didn't see it.

In some cases, Trump acknowledged he was wrong — but not that he was at fault. Instead, he sought to turn the blame on others.

"This is somebody that wrote it, probably Meredith McIver," Trump said at one point when confronted with another false statement. "That is a mistake."

McIver, a staff writer with the Trump Organization, blazed into the public eye last month for having inserted plagiarized material — taken from Michelle Obama's 2008 convention speech — in the convention speech of Trump's wife, Melania. McIver said it had been an innocent mistake.

But in this deposition more than eight years earlier, Trump was blaming her for a mistake in one of his own books, "How to Get Rich." In the 2004 book, co-written with McIver, Trump described his massive debt load during a low period in the early 1990s. "I owed billions upon billions of dollars — $9.2 billion to be exact," the book said as it retold the story of his rise back to success.

The depth of that financial hole made it seem even more impressive that Trump had climbed out again. But the figure was wrong. His actual debts had been much less.

"I pointed it out to the person who wrote the book," Trump said, meaning McIver.

"Right after she wrote the book?"

"That's correct," Trump said.

Then the lawyer showed Trump another book he'd written with McIver, three years later.

"In fact, I was $9 billion in debt," Trump read aloud. A similar error, repeated. It was McIver's fault again.

"She probably forgot," Trump said.

"And when you read it, you didn't correct it?"

"I didn't see it," Trump said.

"You didn't see it."

"I read it very quickly," Trump said about a book he was credited with writing.

TRUMP MAKES UNSUPPORTED CLAIMS

LAWYER: When you wrote, "O'Brien . . . threatened sources by telling them he can, quote, 'Settle scores with enemies by writing negative articles about them,' " what was the basis for that statement?
TRUMP: Just my perception of him.
I don't know that he indicated anything like that to me, but I think he probably did indirectly. Just my dealing with him.

In other cases, the lawyers prodded Trump into admitting that he had made authoritative-sounding statements without any proof behind them. These statements were another kind of untruth.

They were not necessarily false. They might have been true.

But Trump said them without knowing one way or the other.

"What basis do you have for that statement?" Ceresney asked in one case, about an assertion from Trump that O'Brien had been reported to the police for stalking.

"I guess that was probably taken off the Internet," Trump said.

On to the next one.

"You wrote, 'O'Brien . . . threatened sources by telling them he can, quote, settle scores with enemies by writing negative articles about them,' " Ceresney asked, reading Trump's words from a legal complaint. "What was the basis for that statement?"

"Just my perception of him," Trump said. "I don't know that he indicated anything like that to me, but I think he probably did indirectly."

The most striking example was a question at the very heart of the legal case: What was Trump's actual net worth?

Trump had told O'Brien he was worth up to $6 billion. But the lawyers confronted him with other documents — from Trump's accountants and from outside banks — that seemed to show the real figure was far lower.

The lawyers asked: "Have you ever not been truthful" about your net worth?

Trump's answer here was that the truth about his wealth was — in essence — up to him to decide.

"My net worth fluctuates, and it goes up and down with markets and with attitudes and with feelings, even my own feelings," Trump said. "But I try."

The interrogation finally ended after two days. Trump's attorney made a final demand.

"I want the record to be crystal clear that every single word, every question, every answer, every word, is confidential," said the attorney, Mark Ressler.

In 2009, a judge dismissed Trump's case against O'Brien. Trump appealed, but in 2011 that was denied, too.

Along the way, this once-confidential deposition became part of the public record when O'Brien's attorneys attached it to one of their motions.

In a brief statement this week, Trump said he felt the lawsuit was a success, despite his loss.

"O'Brien knows nothing about me," Trump said. "His book was a total failure and ultimately I had great success doing what I wanted to do — costing this third rate reporter a lot of legal fees."

O'Brien, now executive editor of Bloomberg View, said Trump got that wrong. The publisher and insurance companies covered the cost.

"Donald Trump lost his lawsuit and, unlike him, it didn't cost me a penny to litigate it," he said.

Rosalind S. Helderman contributed to this report.