S. HRG. 115–118

NOMINATIONS OF DAVID J. RYDER, HESTER M. PEIRCE, AND ROBERT J. JACKSON, JR.

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

ON

NOMINATIONS OF:

DAVID J. RYDER, OF NEW JERSEY, TO BE DIRECTOR OF THE UNITED STATES MINT

HESTER M. PEIRCE, OF OHIO, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

ROBERT J. JACKSON, JR., OF NEW YORK, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

OCTOBER 24, 2017

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

Available at: http://www.fdsys.gov/

U.S. GOVERNMENT PUBLISHING OFFICE

27–588 PDF WASHINGTON : 2017

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

MIKE CRAPO, Idaho, *Chairman*

RICHARD C. SHELBY, Alabama
BOB CORKER, Tennessee
PATRICK J. TOOMEY, Pennsylvania
DEAN HELLER, Nevada
TIM SCOTT, South Carolina
BEN SASSE, Nebraska
TOM COTTON, Arkansas
MIKE ROUNDS, South Dakota
DAVID PERDUE, Georgia
THOM TILLIS, North Carolina
JOHN KENNEDY, Louisiana

SHERROD BROWN, Ohio
JACK REED, Rhode Island
ROBERT MENENDEZ, New Jersey
JON TESTER, Montana
MARK R. WARNER, Virginia
ELIZABETH WARREN, Massachusetts
HEIDI HEITKAMP, North Dakota
JOE DONNELLY, Indiana
BRIAN SCHATZ, Hawaii
CHRIS VAN HOLLEN, Maryland
CATHERINE CORTEZ MASTO, Nevada

GREGG RICHARD, *Staff Director*
MARK POWDEN, *Democratic Staff Director*

ELAD ROISMAN, *Chief Counsel*
MICHELLE MESACK, *Senior Counsel*

ELISHA TUKU, *Democratic Chief Counsel*
LAURA SWANSON, *Democratic Deputy Staff Director*
MEGAN CHENEY, *Democratic Legislative Assistant*

DAWN RATLIFF, *Chief Clerk*
JIMMY GUILIANO, *Hearing Clerk*
SHELVIN SIMMONS, *IT Director*
JIM CROWELL, *Editor*

C O N T E N T S

TUESDAY, OCTOBER 24, 2017

NOMINEES

Additional Material Supplied for the Record

NOMINATIONS OF DAVID J. RYDER, OF NEW JERSEY, TO BE DIRECTOR OF THE UNITED STATES MINT; HESTER M. PEIRCE, OF OHIO, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION; AND ROBERT J. JACKSON, JR., OF NEW YORK, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

TUESDAY, OCTOBER 24, 2017

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:02 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. This hearing will come to order.

This morning we will consider three nominations: Mr. David Ryder, to be Director of the U.S. Mint; Ms. Hester Peirce, to be a member of the Securities and Exchange Commission; and Mr. Robert Jackson, to be a member of the Securities and Exchange Commission.

These nominees, if confirmed, will serve important roles in our Nation's commerce and capital markets.

Mr. Ryder is well equipped to oversee the manufacturing and distribution of our Nation's currency, as well as collectible coins, national medals, and precious metals, based on his executive experience in the private sector and extensive Government service.

Most recently, Mr. Ryder served as Global Business Development Manager and Managing Director of Currency for Honeywell Authentication Technologies after serving as CEO of Secure Products Corporation. He also has firsthand experience with the U.S. Mint, having served as its Director beginning in 1991 under President George H.W. Bush.

His time in Government service also includes serving as Deputy Treasurer of the United States, Assistant to the Vice President, and Deputy Chief of Staff to Vice President Dan Quayle. Raised in Idaho, Mr. Ryder attended Boise State University.

Following Mr. Ryder, we will receive testimony from both Ms. Peirce and Mr. Jackson to be members of the SEC.

Earlier this year, the Senate confirmed the President's nominee for SEC Chair, Jay Clayton, who now serves with Commissioners Michael Piwowar and Kara Stein.

Today we have the opportunity to consider two more highly qualified nominees who, if confirmed, would round out the SEC's five-person Commission.

The SEC has an important three-part mission: protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Each part of the mission is equally important and should not come at the expense of another.

Today's nominees have demonstrated a depth of knowledge in securities law and financial markets through their previous experience and body of academic work.

Ms. Peirce is a senior research fellow at the Mercatus Center at George Mason University and the director of Mercatus' Financial Markets Working Group. Before joining Mercatus, Ms. Peirce served on the staff of the Senate Banking Committee under Chairman Shelby, served at the SEC as a staff attorney and as counsel to Commissioner Paul

Atkins, and worked as an associate at a Washington, DC, law firm.

Mr. Jackson is a professor of law and director of the Program on Corporate Law and Policy at Columbia Law School where he has focused on executive compensation and corporate governance matters.

Prior to joining Columbia in 2010, Mr. Jackson served as a senior policy adviser at the U.S. Department of Treasury in the Office of the Special Master for TARP Executive Compensation and practiced in the executive compensation department of a New York law firm.

I look forward to hearing the priorities of each nominee in their respective positions, as well as their thoughts on the U.S. capital markets or the production of our Nation's currency.

Congratulations on your nominations, and thank you and your families for your willingness to serve.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. And welcome to all three witnesses. Good to see you all, some of you for the second time. So nice to see you.

David Ryder has been nominated to be Director of the U.S. Mint. Congratulations. Ms. Hester Peirce and Mr. Robert Jackson, Jr., have been nominated to be members of the SEC, as the Chairman said.

Mr. Ryder previously served as Director of the Mint in the George H.W. Bush administration. Since that time he has continued to work in the world of currency design and security in the private sector, most recently at Honeywell. His public service and corporate experience have prepared him to lead the Mint in a time of evolving currency design and technology.

If confirmed, Ms. Peirce would return to the SEC as a Commissioner. Her time at the SEC and working on the Banking Committee's staff provide her with a broad understanding of the agency's regulatory and legislative issues at a time when technology is transforming the way financial markets work.

Mr. Jackson's academic and private sector background will help him weigh the theoretical and practical sides of SEC policy. His scholarship on executive compensation—something very important to this Committee—and corporate governance will be useful as the SEC works to finish, finally, the executive compensation rules required under the years-ago-passed Wall Street Reform Act.

The nominees to the SEC will finally bring the Commission to full strength. The SEC has joined corporate America as a cyberattack victim. Not only must the SEC protect the data it collects, it must make sure the public companies that are the engine of our economy are up front with investors and their customers about cyber risks and breaches.

I want to emphasize the SEC's investor protection mission is the cornerstone of a well-functioning stock market, and that is something that is very important to remember. The SEC must work tirelessly to ensure integrity and fairness in the capital markets so that investors can believe in the markets and in the regulator.

The failure to hold any senior executives responsible for the massive misconduct during the financial crisis stands out as a failure in enforcement and not just at the SEC. Ms. Peirce and Mr. Jackson, this is something that should bother you as well, and if you are confirmed, I expect you to do everything you can to promote a strong enforcement program.

Thank you.

Chairman CRAPO. Thank you, Senator.

We will now move to the testimony, and before doing so, we need to place each of you under oath. Would you please rise and raise your right hand? Do you swear or affirm that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. RYDER. I do.

Ms. PEIRCE. I do.

Mr. JACKSON. I do.

Chairman CRAPO. And do you agree to appear and testify before any duly constituted committee of the Senate?

Mr. RYDER. I do.

Ms. PEIRCE. I do.

Mr. JACKSON. I do.

Chairman CRAPO. Thank you. That will do.

I will begin the questioning with both you, Ms. Peirce, and Mr. Jackson. While I——

[Pause.]

Chairman CRAPO. They just reminded me I need to let you make an opening statement.

[Laughter.]

Chairman CRAPO. I guess I will.

Senator BROWN. This is so much on the Banking Committee's agenda that we just want to dispense with all the formalities.

[Laughter.]

Senator SHELBY. Mr. Chairman, he is from Idaho. You may dispense with it. That is up to you.

Chairman CRAPO. Actually, I really do want to hear your opening statements.

Senator BROWN. They put all that work into writing the opening statements, and nobody wants to hear them.

Chairman CRAPO. OK. My face is red, and we will now start with you, Mr. Ryder, with your opening statement.

STATEMENT OF DAVID J. RYDER, OF NEW JERSEY, TO BE DIRECTOR OF THE UNITED STATES MINT

Mr. RYDER. Thank you, Mr. Chairman.

First, I would like to introduce my family who came here today: my wife of 35 years, Monie; my daughter, Caroline; and my son, Nick Ryder. And my niece, Sarah Ryder, came up from San Antonio, Texas, and is interested in learning more about the Government process, so she came up from San Antonio to be with us today.

Thank you, Mr. Chairman, Senator Brown, and distinguished Members of the Committee for allowing me to appear here today. Mr. Chairman, as you said, I am a fellow Idahoan, having grown up in Boise. In fact, my siblings and I still own a small piece of property just outside of McCall, so I do my best to get out to Idaho at least once a year to visit family and spend a little time in what the great State of Idaho has to offer.

Chairman CRAPO. We appreciate it, and we hope you bring some common sense back with you to your job.

Mr. RYDER. Thank you.

First, I must say that I am honored that President Trump has nominated me to serve as the 39th Director of the United States Mint.

As you are aware, in 1992, I was nominated by President George Herbert Walker Bush to be the 34th Director of the Mint. I received a recess appointment at that time and served for a period of 14 months.

When I left the Government in 1994, I became a partner with Secure Products, a new venture spin-off from the Sarnoff Corporation in Princeton, New Jersey, which was formerly the central research facility for the RCA Corporation. Our mission was to develop advanced anti-counterfeiting technology solutions to be primarily used in currency and branded products. After a successful 13 years in business, the Honeywell Corporation acquired Secure Products in 2007. The ensuing 10 years was spent with Honeywell as their global business development manager and managing director of currency.

In my role at Honeywell, I worked with Government agencies and central banks around the world to address currency issues. Interestingly, one of my last duties while at Honeywell was a joint project with The Royal Mint of the United Kingdom where we assisted them in the development of the new U.K. one pound coin, which was introduced earlier this year. This new circulating coin is considered to be the most advanced and secure coins in the world today.

If confirmed, I would like to make education one of my focal points at the Mint. As the 34th Mint Director, we introduced an initiative called the "Money Story". The goal of this initiative was to educate the youth of this Nation on the history of money, both coinage and paper, via a teacher's curriculum and a video co-developed by the U.S. Mint and the Bureau of Engraving and Printing. This packet of information was made available to all teachers for use in the classroom. Teaching our youth early on how to collect coins and other numismatic products, as well as how to start saving their hard-earned money, helps lay the foundation of the importance of money. Over the years, the Mint has continued this excellent tradition via various tools which are located on their website.

Having worked in the currency industry for the past 25 years plus, I have developed a strong operational and technical understanding of this tight-knit industry. I respect the men and women who dedicate their lives to this industry. During my time with Secure Products and Honeywell, I was afforded the opportunity to visit and work with many private and Government currency manufacturers in the United States, as well as around the world. I will bring to the Mint Director position a strong understanding of the industry and many of the challenges it faces.

If confirmed, I would be honored to once again serve in our Government and work with this Committee. The U.S. Mint has an impressive history, and I look forward to becoming part of that history again. As in all businesses, I am sure the Mint has challenges to address. I look forward to facing these challenges while at the same time fulfilling its mission.

Thank you.

Chairman CRAPO. Thank you.

Ms. Peirce, welcome back to the Committee, and you may now start your statement.

STATEMENT OF HESTER M. PEIRCE, OF OHIO, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

Ms. PEIRCE. Thank you. Chairman Crapo, Ranking Member Brown, and Members of the Committee, it is a privilege to be here today with you, and it is an honor to be nominated, alongside Professor Jackson, to be a member of the Securities and Exchange Commission. If I am confirmed, I look forward to working to protect investors, uphold market integrity, and facilitate capital formation—the three interrelated parts of the SEC's mission.

As a young girl, when I was in junior high school, I dreamed of being a securities analyst. Now, admittedly, that dream was probably built more on the fact that there was always a Wall Street Journal gracing my father's reading chair, and my mother was always listening to the market news on the radio. And, ultimately, that dream was not to come true, but perhaps it planted the seeds for why I am here today.

Ultimately, I went on to study economics at Case Western Reserve University and law at Yale. And following my clerkship, I joined a law firm where I worked in the securities practice group. Ultimately, I found my way to the SEC where I spent 8 years. The first part of my time there was spent as a staff attorney in the Division of Investment Management, after which I joined Commissioner Atkins' office and worked on a broader range of issues. Then I had the privilege of coming to this Committee and working for Senator Shelby, and most recently, I have been at the Mercatus

Center, where I have learned much from my colleagues' knowledge about regulation and economics.

My desire to return to the SEC is motivated by a belief in the importance of individuals, institutions, and innovation. Every individual has a unique set of interests, talents, knowledge, relationships, and in order for our country to be able to draw on those, we need to make sure that our capital markets function properly. So, for example, an entrepreneur who wants to start a business and has an idea, she needs the money so she can meet investors through the capital markets. And then when those investors invest in her company, she is able to employ other people who can then use their skills and abilities to further the enterprise. And then when the investors get their returns from their investment, they are able to invest it in their own children's education, and those children then become the next generation of entrepreneurs and employees.

But no one is willing to trust her fortunes and future to the capital markets unless the institutional framework surrounding them is strong. We need to have clear rules that are enforced carefully, and we need to foster compliance with them. And, of course, everything needs to be done in an orderly way, with impartiality and diligence. In the United States, the SEC is a key part of that institutional framework. It is important for it to set and establish clear rules and modernize them when necessary.

And that brings me to my third point, which is innovation. Why is innovation important in financial markets? Not only does innovation lower prices and improve quality, but it expands access to people who have not had access to the capital markets in the past, and it opens up access to companies that have not had the ability to use the capital markets in the past. But sometimes regulation is so inflexible that innovation cannot happen, and so we need to make sure that our rules are flexible enough to accommodate innovation as appropriate.

If I am confirmed, I look forward to working with Chairman Clayton and my fellow Commissioners to implement, enforce, and modernize rules to support healthy, dynamic capital markets. Together we can ensure that our capital markets serve individuals and companies across this country, that we build strong institutions, and that we support innovation.

Thank you, and I look forward to taking your questions.

Chairman CRAPO. Thank you, Ms. Peirce.

Mr. Jackson.

STATEMENT OF ROBERT J. JACKSON, JR., OF NEW YORK, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

Mr. JACKSON. Thank you. Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you very much for the opportunity to join you today. It is my honor truly to be testifying before you regarding my nomination to be a Commissioner of the Securities and Exchange Commission.

For me, there is no greater privilege or responsibility than upholding the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate access to capital. And to understand why that is so important to me, I thought it might be helpful for me to start today by sharing a bit about myself and my family. I was born in the Bronx, New York, to my two wonderful parents, Maureen and Robert Jackson, and I feel so fortunate that they could be here with me today. My mother was one of nine children; my father was one of five. And of all those people, no one, least of all my parents, would have even dreamed that 1 day they would be sitting behind their son on an occasion like this.

You see, the day I was born, my father was working as an encyclopedia clerk—as an accounting clerk at a small encyclopedia company called Funk and Wagnalls. Throughout my childhood, my mother held several part-time jobs, including the early shift at Dunkin' Donuts, just to help make ends meet.

They were young, overworked, and sometimes even overwhelmed. But they believed that if they worked hard and saved what they could, their son might someday go to college.

So every month my parents plowed their hard-earned paychecks into the market, knowing that if their investments were protected and growing they might someday be able to afford to send me to school. And that is really the only reason that I had the chance to go to college—and the incredible opportunity to be here with you all today.

I believe that the SEC's purpose is to protect everyday investors like my Mom and Dad. Because today's markets are so complex, it can be easy to get lost in technical details and forget why those safeguards are so important. But my story shows why protecting America's investors is at the heart of what the SEC does. Safe markets not only encourage investment and entrepreneurship and growth. Safe markets make it possible for two young middle-class parents to transform their lives so that someday their son has the chance to sit before the U.S. Senate as a Presidential nominee. Safe markets are at the core of the American dream, and that is something I have learned by living it.

That is why my work—in Government, as a teacher, and as a researcher—has always focused on everyday investors' confidence in our markets. At the Treasury Department during the financial crisis, I was proud to help develop rules that tie top managers' pay more closely to performance and give investors a voice on executive compensation. When my research team at Columbia Law School showed that the SEC's systems were inadvertently giving high-speed traders market-moving information before the public could see it on the SEC's website, I worked with this Committee's staff to help make sure the SEC gave investors the level playing field that they deserve. And when our team helped convince regulators to release additional information about stockbroker fraud, we were proud to help others use the data to expose the brokers most likely to defraud investors.

If I have the honor of being confirmed, I intend to bring those tools to bear on the SEC's crucial task. I will be a strong advocate for exploring how new technologies can help make corporate disclosures more reliable and enforcement efforts more effective and efficient. I will encourage the staff and my fellow Commissioners to draw on the SEC's long history of favoring transparency as a means of maintaining investor confidence in our markets. And I will work to implement the corporate governance protections that Congress has enshrined into law so that investors, employees, and communities can be sure that our companies are working to produce the kind of long-term value creation that has been the hallmark of the American economy for generations.

Whether protecting retirees from stockbroker fraud, making sure Americans get a fair price when they purchase shares of stock, or uniting an entrepreneur with the funding he or she needs to spur a life-changing invention, the daily meat-and-potatoes work of the Commission and its staff is crucial to the functioning of our economy. It is vital to millions of American businesses and families. That is why my parents' story is such an important reminder to me. You see, my parents' confidence in our markets not only changed my life; it changed their lives, too. My father, the encyclopedia company clerk, retired as the chief accounting officer of a public company. My mother left Dunkin' Donuts, earned her teaching degree, and has been teaching elementary school now for nearly 30 years. None of that would have been possible if my parents had not felt they could safely save for their futures—and mine—in our markets. If I am confirmed, you should know that helping to make stories like theirs possible is what will motivate me every day. That is really what makes the SEC so important—and why I am so honored to be here.

Thank you again for the opportunity to appear before you today. I would be delighted, of course, to answer any questions you might have.

Chairman CRAPO. Thank you, Mr. Jackson.

And now we are at the question time, and I will start out. I want to start out with you, Ms. Peirce and Mr. Jackson. And while we all know that the Chairman of the SEC sets the agenda for the Commission, I would like each of you to just discuss one or two or three areas that you think the Commission should focus on and prioritize during the next year. Ms. Peirce, why don't you start out?

Ms. PEIRCE. Thank you. In addition to the rulemaking agenda that is going to be taking up a lot of time, I think there are some important issues to look at, for example, the supervision, the oversight of firms through OCIE. The Office of Compliance, Inspections, and Examinations is an important thing. I want to see how that is working, including the oversight of SROs, such as FINRA. And I also think it is important to take a look at market structure again, not only equity market structure but also fixed-income market structure. I think we need to have a long-term view of how we can address some of the problems that we see cropping up in those areas. And then, of course, the recent events suggest that cybersecurity will be an important area for us to keep an eye on.

And, finally, I know that once you get inside an agency, you often see things that you did not see before that need attention. So I will definitely have an open mind to consider other issues that need to be looked at.

Chairman CRAPO. Thank you.

Mr. Jackson.

Mr. JACKSON. Well, thank you, Senator. I would emphasize three areas in response to your question, and the first would be cybersecurity. I think recent events both at the SEC and public companies have taught us that we have got some work to do, sir, in making sure that our securities rules and our securities regulators have the tools and technologies in place to keep up with the changing marketplace. So I think that is an area we should focus.

Second, I would also want to focus on completion of the outstanding rules that the Dodd–Frank Act requires. Sir, I am concerned that some 7 years after the passage of that law, several important investor protections, including protections around executive compensation and the clawback of erroneously awarded pay, still are not finished. I think those are things we should be working on and finishing, and right now the Commission has several proposals before it that I think are worth some attention.

And then, finally, I think we should be thinking about enforcement and, in particular, sir, the law of insider trading. I worry that some of the recent events have caused investors to wonder whether or not the SEC is really on top of the job, is really the cop on the beat that we need to make sure that investors are getting a fair deal. I think those enforcement efforts deserve further attention and, if confirmed, I would very much look forward to working on them.

Chairman CRAPO. Well, thank you.

And, Mr. Ryder, similarly, what are some of the top two or three priorities you would like to bring to the U.S. Mint?

Mr. RYDER. Well, having not had a Director of the Mint for some 8 years, I think one of the things is to get in and get my hands dirty and understand a lot of the issues that have not been addressed by a Director in the past 8 years, to address some of the EEO issues that may be before the Mint, manufacturing issues with the manufacturing facilities, and make sure they are running smoothly in order to be able to achieve higher revenue for the Government. Last year, the Mint returned some $550 million to the general fund in processes and fees from special coinage programs and from of Seigniorage. I would like to try to increase that revenue. And then, finally, work with the Members in this Committee to ensure that some of these commemorative programs that do earn quite a lot of money for the Government are operated professionally, smoothly, and return the type of value that you all expect.

Chairman CRAPO. Thank you. And I only have about a minute left, so I would like to ask you to be very brief in your response. This question is for Ms. Peirce and Mr. Jackson. Both of you brought up enforcement in my first question. This question relates to it, and while the SEC does not have criminal authority, it does have civil enforcement authority.

To each of you, and, again, briefly, could you describe your views on the SEC's enforcement program as well as your views on bringing actions against individuals and not just regulated entities when appropriate?

Ms. PEIRCE. Enforcement is a key part of what the SEC does. If the SEC is not enforcing rules, then no one will take them seriously. So I think it is really important to focus resources on the right areas. I am glad that the Chairman is focused on retail fraud. And I think that looking at individuals is important. If something has been done wrong, an individual has been involved. So I would like the SEC to make an effort to look for individuals to hold responsible.

Chairman CRAPO. Mr. Jackson.

Mr. JACKSON. Mr. Chairman, I think that enforcing the securities laws is critical to maintaining investor confidence. And in particular, what I would be interested to learn more about at the agency would be the degree to which new technology is being used to make those enforcement actions not just more effective but more efficient, so we can make the best possible use of the resources that Congress gives us.

Chairman CRAPO. Thank you.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Mr. Jackson, senior executives at Wells Fargo and Equifax, both who testified in our Committee recently, they oversaw longstanding problems: fraud pushed from the top at Wells Fargo, undoubtedly, and negligent cybersecurity practices at Equifax. They were allowed to retire after giving up only part of their compensation packages. Equifax CEO Richard Smith, who retired in sort of humiliation, received salary and stock worth $57 million in 2016, could still receive about $90 million for retiring. I suppose that is—57 plus 90 is about a dollar for every person whose information was stolen, if I can personalize it a little bit. Existing clawback rules in the proposal under the Wall Street Reform Act only apply if there is financial fraud. We now have two examples frankly that could be just as bad as cooking the books.

Mr. Jackson, how should corporate boards and the SEC encourage sound executive compensation practices and improve accountability?

Mr. JACKSON. Well, thank you, Senator, and just to begin, I could not agree with you more that corporate accountability and making sure that investors see that when things like this happen executives do not walk out the door with the kinds of payments you are describing are critical. Senator, that is why I would favor finishing the rules that the SEC is currently working through that are mandated by the Dodd–Frank Act. And, in particular, Section 954 of that statute authorizes and requires the SEC to promulgate rules requiring companies to adopt policies or develop policies on the clawback of executive compensation in a variety of circumstances. And I think this would be one that we should be taking a careful look at.

It is troubling to me, Senator, that 7 years after the passage of that law, those rules still are not in effect, and I think that is among the first questions I would ask if I were confirmed.

Senator BROWN. And I think both of you—I do not know either of you well. I have spoken, obviously, privately and publicly in this sense with each of you. I think you both understand how this undermines the public's confidence in the people you regulate and in the Government for the fact that—you know the litany—nobody of major consequence went to prison. We think it is a victory around here when a CEO who resigns in disgrace gives up his bonus—always a "his," it seems—gives up his bonus, like that is a major give-back even though they have pocketed tens of millions of dollars with no real accountability. And I hope that both of you understand what that does to people's faith in Government, in regulators, and particularly in the financial sector.

I want to talk about—let me go with this next question. This will be for Ms. Peirce and Mr. Jackson. I am concerned that companies are failing to disclose information to investors and to the public. Wells Fargo covered up a fake account scandal. They were investigated. They were sued by three regulators. They agreed to a $180 million fine. Cynics and people not so cynical would say that is just a cost of doing business. The company said this was not material. In the meantime, investors and consumers who entrusted Wells Fargo with their money were left in the dark.

Equifax waited over a month to disclose the breach that led to the theft of over 145 million Americans' personal information, has never said when or how it determined the breach was material. In the meantime, investors and consumers—even though executives knew, some of them, the investors and consumers were left in the dark.

Ms. Peirce, how can investors be confident they are getting the whole story from companies like Equifax and Wells Fargo that seem—these companies seem to choose when the rules apply to them?

Ms. PEIRCE. Senator, without speaking to any particular company's disclosure, it is really important for companies to think carefully about what material facts they need to disclose. And the SEC staff works intensively with companies and goes back and forth about what is happening at the company. But, of course, ultimately the company knows better than the staff what is material and what is not, and so the ultimate responsibility is on the company.

Senator BROWN. So you argue that we should leave the decision to the company on what is material?

Ms. PEIRCE. No. My point is just that the SEC is pushing companies on what is material and what is not, but the ultimate responsibility—when omissions are made, the ultimate responsibility lies with the company, not with the staff.

Senator BROWN. When a company makes a decision like Equifax, they apparently thought it was not material for a period of time. The Equifax stock price dropped 25 percent after it disclosed. That seems material to me. If you are saying that it is up to the company to decide materiality, doesn't that mean company executives should be held accountable when it clearly—maybe they thought it was not material, but certainly the stock market and investors and the public did.

Ms. PEIRCE. Again, without speaking to any particular company's disclosure, it is important to hold companies and individuals responsible when omissions are made.

Senator BROWN. OK. Mr. Jackson, what can the SEC do to make sure fewer companies make the wrong decisions in terms of materiality especially? What do we do to make sure those companies that make—that they make fewer wrong decisions, if you will, like Equifax and Wells Fargo?

Mr. JACKSON. Thank you, Senator. I think the way to think about this and the way I think about it is from the point of view of investor protection. The materiality standard asks us to think through what would a reasonable investor think affects the total mix of information about the stock that they are choosing to buy or sell.

Now, for me, my concern is that the SEC's rules in this area and guidance on what materiality is is not keeping pace with the changes in our markets and our companies. I think the recent events you talked about are some evidence of that. And for me, this requires the SEC to think through how are the kinds of disclosures companies are making in today's market different from the ones they were making in the market 5, even 7 or 10 years ago? And how do we need to update the way we guide companies about what is important to investors going forward? That would be the way I would think about this issue.

Senator BROWN. Thank you.

Chairman CRAPO. Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Ryder, on October 16th, the Inspector General of the Treasury Department, Mr. Eric Thorson, provided a memorandum to the Treasury Secretary discussing challenges that the Department is currently facing. In this memo, the Inspector General stated that the U.S. Mint should consider the effect of alternative payment methods and other technological advances. If confirmed, in what ways will you address Inspector General Thorson's concern in the area of cryptocurrency?

Mr. RYDER. Thank you, Senator. Having spent the last 25 years primarily with technology-related companies, I certainly appreciate the advancement in technologies. Some of the things that we did for central banks around the world were based on advancements in anti-counterfeiting technology. If confirmed, I do plan on entertaining as many technology companies that want to come to the Mint and present their technology. I think it is important to grow the technology base. Given how old it is, certainly change is necessary in certain cases. So I would welcome the opportunity to do that.

Senator SHELBY. Could the cryptocurrency be a challenge to a lot of the central banks and so forth that regulate our currency?

Mr. RYDER. Probably. Central banks are pretty old institutions that do things one way.

Senator SHELBY. I know.

Mr. RYDER. And they do that for a long time, and it is hard to change. The payment systems, vending machines, all of those apparatuses worldwide would need to be looked at, retrofitted if necessary, but with the proper technology, I think it is possible to certainly entertain it and see where it takes us.

Senator SHELBY. If you do not, won't the market get ahead of the regulators?

Mr. RYDER. That is quite possible. Technology is a pretty slippery slope, and you have to be pretty darn sure of what you are implementing in a market this size that it is going to work, is going to work effectively, and not slow down the payment process.

Senator SHELBY. Ms. Peirce, I join Chairman Crapo in welcoming you back to the Committee where you spent a lot of time. If confirmed, you will be tasked, as you well know, with protecting everyday investors—you mentioned that—while maintaining the efficiency and integrity of U.S. capital markets. I have long believed that the best way—one of the best ways for the SEC to do these things is to conduct a thorough cost-benefit analysis on all rulemaking. For the U.S. to maintain its longstanding position as having the strongest capital markets, I believe the regulators must ensure that they prevent bad actors from taking advantage of individuals while also not creating an undue regulatory burden. Do you want to speak to that?

Ms. PEIRCE. Yes, I think that the——

Senator SHELBY. The cost-benefit analysis.

Ms. PEIRCE. Economic analysis is extremely important. The agency needs to figure out what the problem is it is trying to solve, and then it needs to look at the different methods.

Senator SHELBY. And also how you do it, right?

Ms. PEIRCE. Exactly. The different methods of solving it and then the costs and benefits associated with each. And it is very important to also build in metrics so that you can look back and see how the rule is working.

The SEC has improved its economic analysis in recent years, but there is more room for improvement, and if I am confirmed, I look forward to working on that.

Senator SHELBY. Mr. Jackson, you had a compelling statement a few minutes ago, and I believe you, along with Ms. Peirce, will be a great addition to the SEC. I have the same basic question to you, because in a 2016 brief I have been told that you filed in the case between MetLife v. the Financial Stability Oversight Council, the FSOC, you stated—and, of course, I know you are an advocate. You stated that using a cost-benefit analysis to designate institutions as systemically important, your words, "reveals a lack of understanding of basic principles of financial regulation." What did you mean there? Or do you disagree with what she said?

Mr. JACKSON. Thank you, Senator. In that brief, in that particular case, the position we were taking was not that cost-benefit analysis is not important.

Senator SHELBY. OK.

Mr. JACKSON. And, Senator, I agree with you that thinking through the costs and benefits of any particular rule is critical to——

Senator SHELBY. It is important to all of us, isn't it?

Mr. JACKSON. Yes, sir. I agree with you. The point we were making in that brief was not that costs and benefits are not important, but that we should know the limits of what we can know about costs and benefits in any particular case, because at the end of the day, Senator, although regulators must work hard to know what costs and benefits are, many of us make policy judgments, including, with all respect, the Congress, not knowing exactly what the implication might be of any particular choice. And that was the point we were making in that case.

Senator SHELBY. OK. Ms. Peirce, quickly, we have a lot of layers of regulation, sometimes—well, we have laws, too, that are overburdensome and so forth. How will you at the SEC work to look back on some of the regulations and ascertain if they are duplicative, do they make sense—in other words, good oversight? Because I think the SEC should do good oversight, just like we should.

Ms. PEIRCE. Yes, it is very important, and the SEC has been around for a long time, so it does have quite a few years of rules, and I think it makes sense to go back and see how individual rules are working and also see how they are working together and when we need to pare things back or when we need to add things. But we should do it very carefully with being mindful of the overall burden.

Senator SHELBY. Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Reed.

Senator REED. Thank you very much, Mr. Chairman.

I was struck, Ms. Peirce and Professor Jackson, that you both identified cybersecurity as one of the key challenges. In that regard, you seem to be closely aligned with Chairman Clayton because he said when he was here for his confirmation, "I think cybersecurity is an area where I have said previously I do not think there is enough disclosure. In terms of whether there is oversight at the board level that is comprehensive for cybersecurity issues, that is something that investors should know, whether companies have thought about the issues, whether it is the particular expertise of the board or not. But I agree that it is something companies should know. It is a very important part of operating a significant company. Any significant company has cybersecurity risk."

I assume you agree with the Chairman, Ms. Peirce.

Ms. PEIRCE. I do think that almost every company these days has cybersecurity risk, and I think it is important for them to think about how to disclose that to investors and for the SEC to think about whether it needs to provide additional guidance to help them do that in light of some of the recent changes in recent years and the fact that the threats are greater now than they were even 5 years ago.

Senator REED. Professor Jackson.

Mr. JACKSON. Absolutely, Senator, I think the risks that companies face on the cybersecurity front today are different than they were even just a few years ago. And my concern is that we make sure that the rules they face and the disclosures they provide to investors keep pace with those changes. I think it is a critical area for the SEC.

Senator REED. Would it help to have some legislative direction so that the SEC could move more expeditiously?

Mr. JACKSON. Well, Senator, I think it is always helpful to have guidance from the Congress about exactly what the SEC's priorities should be, and I look forward to working with you and your staff on those questions. But I should point out that updating these rules is critical to the SEC's mission more generally, and they can, and I think sometimes they should, do it without legislation.

Senator REED. All right. Another aspect of the SEC's responsibility for cyber is having the resources. In Dodd–Frank, I helped legislate a $50 million per year fund for the SEC for technology improvements and cybersecurity. And, again, I asked Chairman Clayton in September about the fund, and he said essentially, "We need more money, and we will ask for more money." And I would again ask, starting with Professor Jackson, do you think we will need significant resources to get the SEC ready?

Mr. JACKSON. Yes, and the reason, sir, is that companies are spending—the markets that the SEC hopes to regulate are spending billions of dollars on the latest technology. And for the SEC to keep up, they need to have the kind of resources that you just described.

I was very glad to see that provision in Dodd–Frank that provides the SEC the funding, and, sir, I am not sure we can ask the SEC to keep up unless we provide them the resources that allow them to do so.

Senator REED. Ms. Peirce, your view?

Ms. PEIRCE. Funding is obviously an important component of the SEC's ability to oversee the markets, but it is also important that resources be used well. And it is a little bit difficult from the outside to understand how well resources are being used. You know, I can see Inspector General reports that talk about problems on the inside. But it will be much easier to assess that when I am actually there.

Senator REED. My sense, though, is that given what we have read in the newspapers, what we have seen on television, given what your regulated entities spend, particularly the large ones, on cybersecurity, the funds that the SEC is devoting are rather meager. So my instincts would be that we need to reinforce your efforts, in addition to providing more guidance, and we are working on legislation to help you do that.

Professor Jackson, you pointed out in your testimony that the purpose of the SEC really is to protect people on Main Street, not people on Wall Street, and because of the complexity of the markets, because of the complexity of products, I wonder if you might expand on those points.

Mr. JACKSON. Thank you, Senator. Yes, I think it is very easy to be at an agency like this one and talk about and think about these problems in very technical ways. What should the 8-K rules look like? What is the right market structure for us? And for me, the important thing, and what I hope I might be able to do if I am confirmed as a Commissioner, is keep in mind why you do it. And I think the reason that you do it is so that everyday investors can have the kind of story my family had, where they can somehow find a way by plowing away money into safe investments in the American economy, somehow find a way to change their lives. And that certainly would motivate me, if I am confirmed, sir.

Senator REED. Thank you very much.

And just for the record, Mr. Chairman, I am not trying to imitate Senator Brown. I have a bad cold.

[Laughter.]

Chairman CRAPO. Well, and you finished within your 5 minutes, also, and I appreciate that.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

First, I want to thank all of you for meeting with me in my office last week, and I just want to start with Ms. Peirce and Mr. Jackson. We had the opportunity to talk about FINRA at our meetings, and I believe there is room for improvement at FINRA, especially in the area of transparency and in the way that they work with compliance with different companies who are producing products.

FINRA must also do, I think, a better job of giving producers an outlet to air their concerns. Sometimes I suspect that the actual companies or the compliance departments want to make sure that producers are absolutely not in front of or involved in any reporting whatsoever of anything that is inappropriate other than directly through a compliance department itself.

I am just curious whether or not it is time to take a second look at FINRA and whether or not their directions with regard to compliance is appropriate at this time and whether or not it has to be looked at and reviewed.

Ms. PEIRCE. I do think that FINRA needs to be reviewed. I am encouraged by the fact that they are now under the leadership of Robert Cook, who has made an effort to reach out to a whole range of constituencies to find out their concerns about FINRA. That said, I think it is important for the SEC to oversee that process closely. I worry about transparency, too, and I have heard from small firms that have concerns about their ability to be heard by FINRA. So I think that is important.

We are seeing the number of small firms drop pretty dramatically, and so one has to ask: Is that related to the fact that the regulatory burden is just not properly calibrated? But then you also raise an important issue, which is we want to make sure that the communication between FINRA and its regulated entities is such that when someone sees something bad happening in the industry, they can go and tell FINRA without being scared that that is going to train FINRA's attention on a firm that is fully compliant and doing things well.

Senator ROUNDS. Do you think that atmosphere exists today?

Ms. PEIRCE. I worry that the atmosphere now is one just as you described: You keep your head low, and you do your thing, and you are not even willing to raise issues when you see real fraud happening.

Senator ROUNDS. Mr. Jackson.

Mr. JACKSON. Thank you, Senator. As we discussed in your office, I think it is important that the SEC take a prominent oversight role with respect to FINRA, and as we discussed, I am in particular interested in the part of your question that talks about transparency. One thing that FINRA has been doing is collecting important information and data on the degree to which stockbrokers are engaged in fraud. And one thing that has come to light very recently is that there are a number of repeat offenders in that space, and I am not sure that FINRA has been transparent enough in giving that information to investors so investors can tell the difference between a producer who can help them plan for their retirement and somebody who is going to take their money.

So I think there is a lot of work to do in that area. But I am also encouraged by Robert Cook's leadership. I think he understands this, sir, and if confirmed, I very much look forward to working with you.

Senator ROUNDS. Thank you.

I think that the Department of Labor's fiduciary rule is fundamentally flawed, and I firmly believe that this should have been done at the SEC in the first place. I think you would have done a better job and you would have understood the need of small investors.

In addition to the jurisdictional issues, this rule truly does hurt that small investor by—most of them are going to get priced out of the market based upon the DOL's current fiduciary rule. Chairman Clayton has been active on this issue since starting at the SEC. What are your views on the DOL's fiduciary rule? And what role do you believe the SEC should have in this space going forward? I will begin with you, Mr. Jackson.

Mr. JACKSON. Thank you, Senator. Let me start by making clear I agree the SEC should have an important role in the development of these fiduciary standards. It is a natural area for the SEC to do rulemaking. And I understand that presently the Chairman is working with the Department of Labor and other regulators to develop the SEC's presence.

Without commenting too much on a matter that might come before me if I were confirmed, I want to say my own view is that what is important in developing this standard is to make sure that the market and investors have consistency. Senator, my concern is that someday investors are going to think they have one standard of protection for their retirement assets and another standard of protection for their brokerage accounts. And I think that kind of confusion is not only costly but does not let investors know what they need to know about the protections that they have.

Senator ROUNDS. I am going to run out of time, but Ms. Peirce?

Ms. PEIRCE. I have concerns about the DOL's rule as it is currently written. I am glad that calmer minds have prevailed and people both at DOL and at the SEC are taking a look at it. I think it is important to work with the States as well and try to get everyone in a room to work together for the objective that everyone has, which is to make sure that investors know the type of service they are getting and that they have access to service.

Senator ROUNDS. Thank you.

Mr. Ryder, I am out of time, but I will ask one question for the record, but I will submit it to you for the record if that is OK with the Chairman. I think you will do a fine job, sir.

Mr. RYDER. Thank you.

Senator ROUNDS. Thank you.

Chairman CRAPO. Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you. I am over here at the children's table.

[Laughter.]

Senator CORTEZ MASTO. I appreciate it. I am a new Senator from Nevada. I appreciate the conversation we are having here today, and, Mr. Jackson, I just wanted to follow up, and Ms. Peirce, on some of the conversation that I have heard already from Senator Brown and some others with respect to individual executive accountability and what that should look like at the end of the day.

Ms. Peirce, what specific steps would you take to bolster executive accountability? I have heard you having this conversation, but what would you actually do when it comes to executive accountability and making sure that the SEC is doing the enforcement necessary?

Ms. PEIRCE. I think a lot of it really does come down to specific cases and asking questions when you get a settlement that only involves a company pushing and saying "why are we settling only with the company without individuals being involved?" Because it really is a case-by-case issue.

Now, we have to be able to prove the case, obviously, against the individual, but I am worried that too often we are just seeing settlements that are using shareholder money to take the focus off the executives.

Senator CORTEZ MASTO. Thank you.

Mr. Jackson.

Mr. JACKSON. Thank you, Senator. My own view about this is that there are two things we should be thinking through.

First, to what degree is the SEC pursuing the enforcement actions that it can against individuals? And I agree with what has just been said that we could focus on not only settlements with corporations, but also the individuals who are responsible. And I think it is terrific to ask that question.

But I would back up, Senator, and ask a broader question, which is: Do we have the law we need, does the SEC have the tools it needs to bring those cases successfully? Because the standards of proof are extremely high, the cases can be difficult to make, and I am wondering whether the law that we have is the law that we need to hold individuals accountable. And that is something I would very much look forward to working with this Committee and you and your staff on, updating that law to make sure that individuals can be held accountable when things go as wrong as they did in the financial crisis.

Senator CORTEZ MASTO. I appreciate those comments, because my next question kind of fits right into that, and you are familiar with the Yates memo, and I specifically am concerned. When I asked Mr. Clayton about the Department of Justice potentially withdrawing the Yates memo from the previous administration, he really could not comment on the potential impact on the SEC's enforcement program. As you know, this memo outlines six key steps prosecutors should take to strengthen the pursuit of individual corporate wrongdoing, and news reports indicate that the Attorney General, Attorney General Sessions, may rescind the memo or scale it back.

So if confirmed to the SEC, will you commit to redoubling efforts to hold individuals accountable for corporate wrongdoing, even if the Department of Justice backs away from the previous administration efforts? Ms. Peirce.

Ms. PEIRCE. Yes, the SEC is an independent agency and has its own enforcement agenda to pursue, and an important part of that is looking at individuals. So I will commit to looking at individuals.

Senator CORTEZ MASTO. Thank you.

Mr. Jackson.

Mr. JACKSON. I agree with Ms. Peirce, and I share that commitment. The SEC is an independent agency, and whatever the Department of Justice does, I think it is important that the SEC redouble its commitments to enforcement and, in particular, holding individuals accountable. So, yes, Senator, I will commit that to you today.

Senator CORTEZ MASTO. I appreciate that.

Arbitration clauses, Ms. Peirce, you have written critically about the CFPB's rule limiting forced arbitration clauses. As we know, this rule will give consumers a choice as to whether they want to resolve disputes with financial companies through a rigged arbitration system or have their day in court. Your claim is that the CFPB's rule should be repealed and the market can solve this problem. If consumers do not like the clauses, they simply can refuse to do business with companies that use them.

But let us take the two recent examples that we have talked about. With the Equifax data breach impacting 145 million Americans' personal data, the company initially included a forced arbitration clause in its identity theft protection service, only removing it after tremendous public outcry. Meanwhile, other credit reporting agencies still use these clauses, and Equifax still even uses such restrictions in it general terms of service. Wells Fargo continues to maintain in court that forced arbitration clauses apply even to fake accounts that consumers never even requested in the first place.

Can consumers ask to be deleted from credit reporting agencies' data bases if they do not like their arbitration clauses? They simply just cannot walk away. And this is data that they do not necessarily own, even though it is their personal information. What rights do they have to vote with their feet when Wells Fargo tries to enforce such a clause on a fake account or Equifax does the same thing with data that is really not their own?

So I am curious how you can make that statement and what your actions would be into looking at forced arbitration clauses as SEC Commissioner.

Ms. PEIRCE. So credit reporting agencies are not regulated entities of the SEC, but in general, arbitration can work well for people, but, obviously, the circumstances around it matter. So if I were at the SEC, I would be happy to work with staff and my fellow Commissioners to consider arbitration as it comes up. But I do think that arbitration in general can be actually more beneficial than class-action litigation. Treasury issued a report yesterday, I think, talking about that. So I think it is important to look at the evidence.

Senator CORTEZ MASTO. So you would be willing to study it as an SEC Commissioner, forced arbitration clauses and the impact they have on individuals who are really entering into adhesion contracts that do not really have the ability to walk away from if they need service?

Ms. PEIRCE. As that issue comes up on the SEC's agenda, but, as I said, the SEC would not be looking at something like the credit reporting agencies, which are outside its purview.

Senator CORTEZ MASTO. My time is running out, and I appreciate your comments.

Mr. Jackson, is this something that you think the SEC would be willing to study or take a look at or has a role?

Mr. JACKSON. I think it should, and let me just say, Senator, that this issue is going to come up again because, increasingly, companies are including mandatory arbitration provisions with respect to shareholder lawsuits against them. And to the degree that these kinds of provisions come up and shareholders are asked to go through arbitration instead of litigation, I will have real questions about the degree to which we are protecting those shareholders. To me, Senator, what is puzzling about that development is we already have some law, the Private Litigation Securities Reform Act, that increases the burdens of proof and tries to deal with nuisance litigation. And, more generally, Senator, I do not have the sense that what we have in corporate America is too much accountability. So for me, I would be skeptical of those clauses, and I want to take a close look at them.

Senator CORTEZ MASTO. Thank you. I notice my time is up. Thank you for your indulgence.

Mr. Ryder, I have no doubt you will do an incredible job. I appreciate all three of you, really, and your willingness to serve in public service, so thank you. And welcome to your families as well.

Chairman CRAPO. Senator Kennedy.

Senator KENNEDY. Thank you, Mr. Chairman.

Mr. Jackson, I listened to your comments about everyday investors and transparency, and I agree with you. Have you ever bought a stock?

Mr. JACKSON. Yes, sir.

Senator KENNEDY. Before you buy, did you read the prospectus?

Mr. JACKSON. Well, I reviewed all the disclosures. It was a company that had gone public some time ago, but I read all the relevant disclosures, yes.

Senator KENNEDY. No. Did you read the prospectus?

Mr. JACKSON. I do not recall in that particular case, but generally I would want to know all the things disclosed, both in the prospectus and the more recent disclosures.

Senator KENNEDY. All right. Have you ever bought a bond?

Mr. JACKSON. Yes, sir.

Senator KENNEDY. Did you read the prospectus?

Mr. JACKSON. No. In that case, I do not think so, sir.

Senator KENNEDY. OK. Ms. Peirce, have you ever bought a stock?

Ms. PEIRCE. I am a mutual fund investor because I realize my limitations.

[Laughter.]

Senator KENNEDY. Before you bought the mutual fund, did you read the prospectus?

Ms. PEIRCE. I did not read the prospectus before I bought the mutual fund, I will admit.

Senator KENNEDY. I guess my question is: What is the point? I mean, I believe in disclosure. And we all talk about everyday people and ordinary investors. But yet we have made the disclosure documents inaccessible.

Now, you are both well-educated, intelligent people, presumably sophisticated investors. You are going to be on the SEC. I mean, what is the point of a prospectus if nobody is reading it?

Ms. PEIRCE. I mean, I think you make an excellent point, which is that especially for things like mutual funds, where it is a retail investor audience that you are going for, it is important to have documents that are tailored for them to read. Now——

Senator KENNEDY. Well, I know I am making a good point. What are you going to do about it on the SEC?

Ms. PEIRCE. Well, I think that that is an issue that—for example, the Investor Advisory Committee is a relatively new addition, a Dodd–Frank addition to the SEC, and I think it can be very useful in helping the Commission figure out what kind of disclosure is needed, and also there is more—the SEC is making a greater effort to do investor testing and things like that. And I think that there is real promise there.

Senator KENNEDY. Well, I can save some time on the investor testing. The lawyers have made the prospectus meaningless. People do not read them. OK? There is your poll. I do not know anybody who reads it. I am not saying we should not have disclosure. We need more disclosure. But what we are doing is not working.

Ms. PEIRCE. I fully agree that we need to revisit disclosures to find out what we can do to make it work.

Senator KENNEDY. I mean, it looks to me like the only people benefiting are the lawyers. You used to be at Wachtell Lipton. I bet you all charged—I am not saying—look, I believe in free enterprise. But, I mean, what do you pay a law firm to put together a prospectus?

Mr. JACKSON. I am sure it is expensive, Senator.

Senator KENNEDY. Yeah. That has always bothered me that the SEC always talks about disclosure, and what I think the SEC does in many cases is undermines it.

Let me ask you this: Can we agree, Mr. Jackson, that the recession from 2008 was probably the worst we have had since the Great Depression?

Mr. JACKSON. Yes, sir.

Senator KENNEDY. How many people went to jail—well, let me strike that. What caused it?

Mr. JACKSON. Well, Senator, it is complicated.

Senator KENNEDY. How about giving me a one-sentence answer? I do not mean to be rude, but I try to stay—how about this: greed? Would you agree with that?

Mr. JACKSON. I would agree that was an important factor, Senator, absolutely.

Senator KENNEDY. All right. How many people went to jail?

Mr. JACKSON. In terms of high-profile, important accountability convictions, I do not think there are any, sir.

Senator KENNEDY. Did the SEC take a lead in trying to hold real people with beating hearts who were greedy, did the SEC do anything to make them accountable?

Mr. JACKSON. Well, sir, they did bring some cases in this area, but as you point out, there were no successful convictions at the highest possible levels of corporate management. And if you are asking, sir, did we do enough to hold those people accountable, then, Senator, the answer is no.

Senator KENNEDY. Ms. Peirce, do you think anybody broke the law on Wall Street in 2008?

Ms. PEIRCE. Certainly.

Senator KENNEDY. And how many went to jail, again? I forgot.

Ms. PEIRCE. Yes, I mean, individual accountability is important——

Senator KENNEDY. Well, where was the SEC? You could not have found them with a search party. Where were they?

Mr. JACKSON. Well, Senator, as I say, the SEC did bring important cases in that area, but if you are unsatisfied——

Senator KENNEDY. And you can count them on this hand.

Mr. JACKSON. Sir, if you are unsatisfied——

Senator KENNEDY. Missing a couple of fingers.

Mr. JACKSON. If you are unsatisfied, sir, with the job the SEC did in holding those people accountable for the devastation of that crisis, so am I.

Senator KENNEDY. I mean, we all give lip service to everyday people and transparency, but when it counted, uh-uh.

I am over my time, but only by 30 seconds. That is a record.

Chairman CRAPO. And I appreciate that.

Senator Heitkamp, see if you can beat his record.

Senator HEITKAMP. You know, I am going to follow up on his line of questioning because I think it is critical. We certainly hope those fund managers are reading the prospectus. And we certainly need to make sure that the information is made more accessible in terms of summary data with background information. And so that can be a big challenge for you guys. But I am sure as a general matter you guys need to know if you share my belief that the quickest way to provide a deterrent from insider trading or all kinds of nefarious bad acts is send someone to jail, right?

Mr. JACKSON. Absolutely, Senator. Enforcement, especially in that area, is absolutely critical.

Ms. PEIRCE. Yes, I mean, sending people to jail is certainly a deterrent.

Senator HEITKAMP. Yeah, I think there is this sense that people, especially in white-collar crime, there is this sense that if you give someone a big fine—but frequently the profits exceed the fine and the fine is inadequate to deter behavior, and we need to see people go to jail. And if we have got a problem, as I think we do with the mens rea qualification or standard for proof of intent, then we need to fix that. And we expect advice from the SEC on how we can do that. I think I talked about this with both of you when you were in my office.

I just wanted to get a couple things on the record. As you know, Senator Heller and I pushed and were successful in getting something called the "Small Business Advocacy Act" passed. Now that the SEC has an obligation to put a small business advocate into policymaking at the SEC, I want to know, if confirmed, do I have your commitment to move quickly to set up the new office and appoint that advocate with a background that understands the capital formation crisis that is facing middle America? Do I have your commitment?

Ms. PEIRCE. Yes, I think it is extremely important to get that voice at the SEC.

Mr. JACKSON. In a word, Senator, yes.

Senator HEITKAMP. OK. Thank you. And can I also get your commitment that you will work to ensure that the Commission appoints individuals to the Advisory Committee who understand the specific challenges of rural startups in the United States of America?

Ms. PEIRCE. Yes.

Mr. JACKSON. Absolutely. I think the SEC needs to cast a wide net and make sure that those kinds of individuals are in those positions so we can really find out what those challenges are and we can address them.

Senator HEITKAMP. This whole bill was never about checking a box and saying look what great thing we did for small business. This is about changing the culture of the SEC as it relates to small business, and so I am glad to have your commitment that you will take that effort very seriously.

Under the Model Business Corporation Act Section 8.42(b), there is a passage that I think is very instructive: "for purposes of establishing knowledge within a corporation of material violations of law or bad behavior." The passage covering fiduciary obligations reads you "must report certain matters to others in the company, including any business information within your sphere of responsibility that you know or have reason to believe to be significant, or concerns actually or probably material violations of the law."

To my knowledge, not one State has adopted this model guidance into law. Would a more robust duty-to-report requirement such as the one proposed by MBCA with associated criminal fines and penalties help force material information up the chain of command to the board and top executives within a corporation?

Ms. PEIRCE. That does seem to be more of a State-level issue than an SEC issue, but I think that there are some changes that have happened. I think the whistleblower changes in Dodd–Frank also have the effect of helping to force stuff up the chain. So I am hopeful that we will see better compliance.

Mr. JACKSON. I do think, Senator, the whistleblower part of the Dodd–Frank law has been important in this respect. What I would like to do, if I have the honor of being confirmed, is learn more about how we can encourage that information to get up the corporate chain, whether it is——

Senator HEITKAMP. I do not want to just encourage it, because everybody agrees it should go up the chain. I want to mandate it, because I am tired of executives saying, "I did not know," "Not my business," "Did not look, not my business." And we absolutely need to change the culture at the top. And we have tried over and over and over again various iterations of forcing this information up the chain only to be unsuccessful. And so let us not pass the buck to State organizations. Let us just sit down and figure out how we are going to get this accountability at the very highest level of corporate America moving forward.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, and almost totally on time.

Senator Scott.

Senator SCOTT. I will try to reverse that trend, Mr. Chairman. Thank you very much.

[Laughter.]

Chairman CRAPO. I have a gavel.

Senator SCOTT. Yes, sir. That is a warning.

Good morning. Thank you, folks, for being here this morning. I will say to Ms. Peirce and Mr. Jackson your answer to Senator Rounds' question on the fiduciary was a very important answer, and I thank you for your answer. There is no doubt that there is an important opportunity for the SEC to coordinate with the DOL as well as State insurance regulators during this 18-month window, because in South Carolina the average person who is close to retiring only has 1 year of income in their retirement account. So the importance of opening the door for more financial experts to come into households and provide expertise so that those retirees have a chance to use their limited resources in the most effective way cannot be overemphasized. So I appreciate both of you being informed, educated, and, frankly, motivated about making a difference in that space. So thank you both for your answers. I was going to ask that question.

Ms. Peirce, I have a different question. You have written about Government regulations that make it nearly impossible for new credit rating agencies to enter the market. I am concerned anytime the Government hinders competition. How can the SEC help change this dynamic, especially with investor guidelines?

Ms. PEIRCE. It is a problem, I think, especially in an area where we have seen the damage when you only have a few large credit rating agencies. So I think that the SEC needs to be willing to work with the credit rating agencies, the smaller agencies, to help them to comply with the rules. And then in terms of investor guidelines, those are private, so it is difficult for the SEC to intervene and force that change. But I think if the SEC allows new credit rating agencies to come up and start, then it is more likely those investor guidelines will change over time.

It is important that all of the NRSRO ratings be removed from regulations and statutes. I think that is the start to then getting the investor guidelines to change.

Senator SCOTT. Thank you.

Mr. Ryder, we have given you too much time off this morning, so I want to ask you a very important question. There are 10,629 jobs held by South Carolinians because of our $2 billion-a-year scrap recycling industry. I have got folks from Spartanburg to Clinton to Cayce and all the way to the coast in South Carolina sitting on millions of dollars of mutilated coins the Mint will not accept. Is reinstating the Mint Mutilated Coin Redemption Program something you will be working on?

Mr. RYDER. Yes, sir. It is a program that was suspended in 2015, for good reason. They needed to review the program. It had been in operation for quite a number of years.

Senator SCOTT. Yes.

Mr. RYDER. And they are currently on track to have a new set of rules hopefully introduced by the end of this year.

Senator SCOTT. Thank you. On behalf of 10,629 folks in my State, we appreciate that.

Mr. Jackson, some believe that the balance between corporate management and shareholders is tilting too far in one direction. Chair Clayton seems to agree. Do current shareholder proposals' resubmission thresholds further fair and efficient markets?

Mr. JACKSON. It is a very important question, Senator, so thank you. What we are trying to do, as you point out, is strike a balance between making sure corporate management can run the firm as they see fit to maximize its value, provide jobs and growth; on the other hand, make sure that they are held accountable, sir, for the decisions that they make by the owners of the company. And the shareholder proposal rules are really shareholders' best opportunity to have a dialog with the company, to bring forth ideas and proposals to management, almost always on a nonbinding basis, to guide the management about what the shareholder thinks the right next step for the company is.

My own sense is that, with respect to the resubmission proposals, the SEC very well could and should take a look at whether repetitive proposals are furthering that goal. So I am someone who is very focused on dialog between shareholders and management, and I think as long as we can advance that goal but minimize the repetitive proposals that consume corporate management's time and cost, I think that would be a good way forward.

Senator SCOTT. Mr. Jackson, Ms. Peirce, Mr. Ryder, thank you very much for your time.

Mr. Chairman, I yield back.

Chairman CRAPO. I appreciate that 13 seconds.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. I thank all of you for your testimony today, and I have some questions to start out with for Mr. Jackson and Ms. Peirce.

There has been a lot of talk about insider trading, and when we had a hearing on Equifax, one of the issues that came up is at what point in time did they have an obligation to inform the public about the hack that had taken place which could have an impact on shareholder value? And that is a big issue of what triggers this obligation and materiality. But there should be no dispute that once a company reaches that decision, they have to inform the public; they have to file an 8-K; that after that point in time, in my view, they should not be engaging in trading their own stock. And I know, Mr. Jackson, you have written about this. You have written about the 8-K gap and shown that during this window of time, the reality is that executives and insiders have traded, so far technically legally, and ended up getting a better deal for themselves than would be available to a member of the public who is informed about these developments.

Could you comment on that? Because we are working on some legislation, bipartisan legislation, to address at least that window.

Mr. JACKSON. Thank you, Senator. Yes, you are right. This is an area in which I have written before, and I am very concerned, sir, that corporate management might be engaging in trading right before the announcement of a material public event, but after the event has occurred. And I think this is a troubling pattern, and I was delighted to hear Chairman Clayton at the last hearing say that it really is good corporate hygiene for insiders not to be trading during this period.

Senator, I would very much look forward to the opportunity to work with you and your staff on the legislation you described. I cannot understand the case, candidly, Senator, for why insiders should be trading right before they are about to announce important news to the public.

Senator VAN HOLLEN. Right. Ms. Peirce, would you agree? You had an exchange a little while ago with the Ranking Member about, you know, what triggers materiality and who makes that determination. But, clearly, once a company has made the determination that they have an obligation to file an 8-K, doesn't it make sense to say that executives cannot engage in trading at that point?

Ms. PEIRCE. Yes, I mean, I thought that Professor Jackson's work on this point was really interesting, and I think there is some useful work to be done in the area, and I look forward, if I am confirmed, to working with you and the other people working on this legislation.

Senator VAN HOLLEN. Thank you.

Now, Mr. Jackson, you said that one of the purposes of, you know, a company's leadership is to "maximize value and to promote growth and jobs." And, clearly, if a company is making decisions that are in the long-term interests of its long-term shareholders, that is something that can promote growth as they make investments, whether in their workforce or other things, but we also have a lot of short-termism. We have lots of examples where CEOs and the top brass seem to make decisions that benefited them at the expense of the long-term interests of the corporation. And I am interested in beginning to look at some of the incentives that are under the jurisdiction of the SEC in that regard because we are about to embark—we are embarked already on a big debate over tax reform, and as you all may be aware, you know, the Department of Treasury under Secretary Mnuchin removed from the website something that had been there through Democratic and Republican administrations about where the benefit of a corporate tax cut goes, whether it is to workers or to the capital side, shareholders, plus folks who benefit from stock buybacks. And it is going to be a really important question.

What you have, I think, at your disposal are some tools that can address this short-termism, and I wondered, starting with you, Mr. Jackson, whether you can talk about issues with respect to CEO compensation in the form of stock that might give them an incentive to look to the long term, not simply short-term profits for themselves.

Mr. JACKSON. Thank you, Senator. Yes, I think that is an extremely important issue, and we are all concerned, I think, about what short-termism is doing to American companies and the economy more generally.

With respect to executive compensation, what I would say is I think it is time for corporate managers who are worried about short-termism to put their money where their mouth is, sir, and to commit to hold the company's stock over much longer periods of time than they currently do, to show investors and communities and employees that the decisions that they are making are long-term decisions.

If that is their argument, Senator, if their argument is that we really want to do the right thing for the long term, then it is hard to understand why they do not want to hold the company's stock over the long term.

You mentioned buybacks, and if I could just add a point on that, Senator, I share your concern that, to the degree that corporate money might soon find its way back in the United States, if there is some legislation on this point, you know, the previous research on the last time we did this makes very clear that that money, the last time we had a tax holiday of this kind, was spent on share buybacks. And I would be concerned that we have the right rules in place governing stock buybacks to make sure that if that tax change were to happen, companies are prepared and required to explain to investors if they are going to use that money for buybacks.

Senator VAN HOLLEN. Thank you. I see my time is up.

Mr. Chairman, if I could, just for the record, submit a *Wall Street Journal* article describing what happened back in the earlier 2000s when we had the tax holiday and which essentially confirms what Mr. Jackson said, that that money essentially went to buybacks, shareholders, and they actually cut their workforce. Thank you.

Chairman CRAPO. Without objection.

Senator Cotton.

Senator COTTON. Thank you, Mr. Chairman. And congratulations to each of you on your nomination.

Ms. Peirce, Mr. Jackson, I want to raise with you an issue I raised with the Chairman a few weeks ago when he was here and that we have also discussed, which is the audit treatment of small broker-dealers. The Dodd–Frank Act requires broker-dealers to be audited by a Public Company Accounting Oversight Board-registered accounting firm, even when they are small, even when they are not introducing brokers, so they do not take custody of assets. I find that a curious policy since the PC in PCAOB is "public company," not "small firm." It also, it should be said, takes away business from small accounting firms in communities in States, all across a State like Arkansas.

So starting with Ms. Peirce, could I get your thoughts on this policy and what the SEC might be able to do, if anything, to give our small broker-dealers as well as our small accounting firms a little bit of relief?

Ms. PEIRCE. I think that the SEC in its oversight capacity of the PCAOB can work with them to understand how they are approaching their supervision of their oversight of broker-dealer auditors and think about whether the scope of that requirement is appropriately tailored. I think, you know, in general, smaller entities that are overseen by the PCAOB have a tough time, and so maybe there are ways that we can help foster compliance to help them try to be compliant rather than coming down on them for problems without essentially forcing them out of the industry, because I think that is the choice that a lot of them are making—that it is just not worth it, so they just get out of that business altogether. Maybe there is a way that we can work with them to foster compliance.

Senator COTTON. Mr. Jackson.

Mr. JACKSON. Thank you, Senator. This broker-dealer auditing program is relatively new, and we are learning some things about it. And as you and I discussed, one of the things we are learning is about the kinds of dynamics and costs when it comes to smaller firms.

One opportunity I am wondering about, Senator, is whether or not we can and should distinguish between custodial and noncustodial broker-dealers for this purpose. I look forward to looking into that. I would want to hear more about what the facts on the ground are. But I look forward to working with you and your staff on making sure that those firms can engage in their business and grow.

Senator COTTON. Thank you. I appreciate both answers, and I look forward to working together with you and the Chair and the other Commissioners upon confirmation. I do not think there is a question of less oversight or less disclosure. It is just a question of smart oversight and recognizing the difference between, you know, a small broker-dealer with a half dozen or a dozen employees and a giant firm, likewise giant accounting firms and small accounting firms.

I would like to now turn to the issue of the consolidated audit trail for which the SEC has asked and just raise the question of, you know, with the SEC's data breach, with the data breach we saw at OPM, is it smart for the SEC to be seeking this information? What is the problem it is trying to solve? And is there away that we could solve that without introducing new risks to sensitive data? Again, we will start with Ms. Peirce and then go to Mr. Jackson.

Ms. PEIRCE. I do have concerns about anytime the SEC is collecting data, I think it needs to ask: Do we need the data? What are we going to use it for? And can we protect it? I am not convinced that those questions have been answered to my satisfaction, but, again, it is difficult to know that without being at the SEC and understanding why they decided on such a broad scope of data. But those are questions, if I were confirmed, that I would want to ask.

Senator COTTON. Thank you.

Mr. Jackson.

Mr. JACKSON. Thank you, Senator. I think it is important to remember why we began the consolidated audit trail program in the first place, and it was really motivated by the flash crash and the need to understand exactly what happened in those markets so we can make sure it never happens again.

Now, I have the same question that Ms. Peirce just described. I am wondering what degree do we need personally identifiable information to solve that problem, and, sir, coming from the outside, I do not know the answer to that question. SEC staff have been working on it for years. I would want to get a better sense of what they are thinking on that question and how well they feel they can protect that PII before making any decisions. But I do think it is important, sir, that we put the cat in place because flash crash is something that we do not ever want to repeat, and we want to be sure we can protect investors if something like that were ever to happen again.

Senator COTTON. Thank you.

Mr. Ryder, this will be your second rodeo at the Mint, 25 years on. What are the biggest changes that you have seen at the Mint from when you were the Director 25 years ago?

Mr. RYDER. Well, coinage is pretty old, and it does not change much. But at the Mint, I think some of the advances in manufacturing, some of the technology that is used in the industry has been quite interesting. I hope to carry that tradition on and see where we can take the Mint from a technology point of view and advance it to the next century and beyond. So I look forward to that challenge.

Senator COTTON. Well, thank you very much for being willing to serve again in a very specialized but very critical role.

Mr. RYDER. Thank you.

Senator COTTON. Thank you all.

Chairman CRAPO. Thank you.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

The 2008 financial crash exposed serious problems in our securities markets, and in response, as part of the Dodd–Frank Act of 2010, Congress directed the SEC to issue new rules that would protect investors.

It is now 7 years later, and the SEC still has not completed more than 20 of these required rules. Think about that. Seven years and 20 rules are still unfinished. The SEC has the worst track record of all the financial regulators. And when the SEC recently released its regulatory agenda for the upcoming year, it did not even include most of these unfinished Dodd–Frank rules.

Now, Mr. Jackson, do you think it is all right that the SEC still has not finished so many of the Dodd–Frank rules and apparently has no plans to finish them anytime soon?

Mr. JACKSON. Absolutely not, Senator. My view is that those protections are critical to preventing the next financial crisis, to making sure investors are protected, and I am especially concerned about the executive compensation protections in Dodd–Frank that are still today not the law.

Senator WARREN. Good. So we are going to come to those in just a minute here. I just want to be clear on the record. If you are confirmed, will you make it a top priority to get these rules back on the agenda and get them completed as soon as possible?

Mr. JACKSON. Absolutely, yes.

Senator WARREN. Thank you.

And, Ms. Peirce, same question. If you are confirmed, will you make it a top priority to get these rules back on the agenda and completed as soon as possible?

Ms. PEIRCE. I will work with the Chairman as he sets the agenda to try to get the rules done that are not done. Obviously, sometimes things come up that are not anticipated that have to take precedence, but I will work with him to get the rules completed.

Senator WARREN. OK. I am a little concerned. The answer seemed to be a little less definitive than Mr. Jackson's because it is the Chairman right now who set the agenda for next year, and he has not even put the rules on the agenda for work.

Ms. PEIRCE. So I think it is important, if I am confirmed, to get to the SEC and to talk with the Chairman to understand what is motivating his decisions about what goes on the agenda. As I mentioned, often when you get inside an agency, you discover that there are other priorities that you did not actually know about on the outside. So I think it is important to remember that the agenda has to follow where the risks really lie. And so, yes, getting rules done that Congress has directed the agency to do is important, but you also have to look at it in context of everything else that is happening at the agency.

Senator WARREN. Well, Ms. Peirce, I just want to be clear. These rules are not optional. It is not a set of rules that says Congress said write these rules if you all feel like it or if it fits in your agenda. We passed a law requiring the SEC to write these rules, and we did that because they matter.

For example, three of those unfinished rules relate to executive compensation. One requires disclosures on why executives are paid what they are paid. Another requires public companies to adopt policies for clawing back compensation from executives. And a third prohibits bank executives from receiving incentive compensation that it could encourage the wrong kind of risk taking.

Study after study has shown that the chance to receive giant bonuses pushed executives to take enormous risks in the run-up to the 2008 crash, risks that blew up the whole financial system, and we know it is still happening.

In the Wells Fargo fake account scam, executives pushed employees to open new accounts at all costs. Why? Because it made the Wells' stock price go up, and that put millions of dollars in the pockets of the executives.

You know, the SEC was told to write these rules 7 years ago. They are central to the SEC's mission of investor protection. So I want to ask the question why you think it is OK for the SEC to continue to ignore them.

Ms. PEIRCE. Having been a staffer on this Committee, I do appreciate the role that Congress plays, which is directing the SEC what to do. And it is the responsibility of the SEC to implement the rules that it has been directed to implement. But, again, part of the reason that those rules are given to the SEC to implement is that it thinks about it in terms of all of the priorities in order to protect investors, facilitate capital formation, and uphold the integrity of the markets. So, yes, it is an obligation of the SEC to do that, and if I get to the SEC, it is something that I will want to understand——

Senator WARREN. My time is out here, so let me just ask this. I just want to make sure to get it on the record. Do you believe you have an obligation to complete these unfinished congressional mandates from 2010 before any other discretionary rules or projects?

Ms. PEIRCE. I cannot answer that question without——

Senator WARREN. Well, I think that is an answer then. You know——

Ms. PEIRCE. ——being at the SEC. The SEC is obligated to implement rules that Congress tells it to implement, but I cannot tell you in what order they are obligated to implement them.

Senator WARREN. Well, but it is supposed to implement the rules. I do not care if you are a Democrat or a Republican. I do not care if you love Dodd–Frank or you hate Dodd–Frank. The SEC is required to follow the law. And if you believe in the American constitutional system, you should demand that the SEC stop this lawless behavior.

I am glad you are willing to do that, Mr. Jackson.

Thank you, Mr. Chairman.

Chairman CRAPO. Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. Welcome to all of you and congratulations on your nomination.

Mr. Ryder, I am going to ask you the first question, but before I do, I am going to ask Ms. Peirce and Mr. Jackson to think about their answer. One of the things I want you all to do, if you take a look at the mission of the SEC as protecting investors, maintaining a fair, orderly market, facilitating the capital formation, and enforcement. So I would like for you all to talk about your critical assessment of the SEC, whether or not the ratios are right in terms of fulfilling that mission. I will give you a chance to think about that.

Mr. Ryder, I have always believed that silence is consent, so the fact that you have not gotten many questions makes me think you are going to do just fine with your confirmation, so you should consider that a good thing.

I just have one question for you, and it really has to do with the future of the Mint. You are right, coinage is kind of old or long-serving, but the world is changing. I was thinking the other day, I was at a convenience store, and 20 years ago I would have never pulled out a credit card to make a $2.50 purchase because at the time people would think you just did not have $2.50, that you could not afford it. Now it is completely inverted. I mean, people that carry crash are crazy. I am not one of them, and let any burglars hear that.

But where do we go from here? When you start talking about alternate payment methods, first we have got counterfeiting. I want you to talk a little bit about that because I know you have some expertise in that area, anti-counterfeiting, I should say. But then where do we go, I mean, what do we do in terms of the future of coins and dollars? And what does it look like 10, 20, 30 years from now based on the nature of the way people settle payments today?

Mr. RYDER. Sure, Senator. Thanks for the question. First of all, I do not think currency is going anyplace anytime soon. I think it is going to be around for quite some time. It may be in a different form, but I think what you see is——

Senator TILLIS. And I am getting to the form part.

Mr. RYDER. And the dollar bills or the dollar coins or the different forms of the currency, I think they are going to be around for a while.

In the coinage industry, that may change with the use of credit cards and so on and so forth, and the vending machines, but the technology that is used to accept those products is also changing because the technology is changing. It gives you a better opportunity to do things that might be a bit more modern, up-to-date.

Senator TILLIS. And just because I want 2 minutes for 1-minute responses from each of the other two nominees, what is the top priority in terms of an additional role that you all will play in anti-counterfeiting?

Mr. RYDER. I think anti-counterfeiting is something that is becoming to be a critical issue. With coinage specifically, the bullion side of the house, with the counterfeitings that are coming out of China and elsewhere that are exceptionally good, I think technology there has to be developed and implemented within the

United States Mint, and that is something I look forward to working on.

Senator TILLIS. OK. And, Ms. Peirce, I asked a question before. I will not be able to do a lot of follow-ups, but give me an idea of your critical assessment of the SEC today and with respect to their mission, whether the ratios and the actions are, in your opinion, just you get confirmed, you want to continue the status quo or not.

Ms. PEIRCE. I think the three parts of the mission too often are thought about as separate parts when they are really interrelated and complementary. So you cannot protect investors if you do not give them investment opportunities. You cannot protect investors if your markets are not working the way they should. And so, unfortunately, I think the SEC has too often taken the view, a very paternalistic view of how to protect investors, which is to limit their options and make sure that nothing bad happens. Instead, I think we should think about investors having access to a portfolio of good investments, because it really is not—you should not think about it—a finance professor would tell you do not think about it on a company-by-company basis. Think about it across a portfolio of companies and give investors access to a broader array, and also make sure that you are allowing companies of all sizes to take advantage of the market. So we may need to make adjustments in order that small companies are better able to access capital.

Senator TILLIS. Mr. Jackson, do you disagree with any of that?

Mr. JACKSON. Thank you, Senator. I think Ms. Peirce has quite aptly described a lot of the challenges the SEC faces, but I want to be clear about something, sir. I think the critical question for me, if I am confirmed, will not just be about what the SEC is focused on. It will get the focus on making sure that the SEC uses all the resources Congress has put at its disposal. Let me give you an example of what I have in mind.

There is a wonderful and very deep source of market data that the Enforcement Division has at the SEC. It is a critical resources that Congress has helped to fund, and it occurs to me, sir, that other divisions at the SEC should be using and have access to those data. In other words, we should try to keep the SEC from becoming too siloed an organization and instead work together across divisions, as Ms. Peirce described, to achieve all the parts of its mission.

So I would look forward to working on that, sir, if I were confirmed.

Senator TILLIS. Thank you, Mr. Chair.

Chairman CRAPO. Thank you.

Senator Schatz.

Senator SCHATZ. Thank you, Mr. Chairman.

Thank you for your willingness to serve. I have a question for Ms. Peirce and Mr. Jackson. A few weeks ago, I asked a question of the Chairman about the disclosures related to severe weather, and I pointed out that there are troubling examples of publicly traded companies that are essentially throwing up their hands and saying because the risk of climate change and severe weather is hard to predict or quantify, we are going to just assume that there is no risk. And I want to read to you an example from Valero Energy's 10-K filing from 2016, and I quote: "Some scientists have concluded that increasing concentrations of GHG emissions in the Earth's atmosphere may produce climate changes that have significant physical effects, such as increased frequency and severity of storms, droughts, and floods and other climatic events. If any such effects were to occur, it is uncertain if they would have an adverse effect on our financial conditions and operations."

And then, at the end of August in 2017, Hurricane Harvey, one of the strongest Atlantic storms in history, shuttered 20 percent of the U.S. oil refinery industry and shut down over a third of Valero's refining capacity over a week. These closed Valero refineries usually produce 1.1 million barrels a day.

And so my question, and I will start with Ms. Peirce, is: Risk is risk, whether it is cybersecurity risk, whether it is political risk, whether it is regulatory risk, or whether it is the risk of severe weather. Do you commit to making sure that the Division of Corporation Finance holds companies accountable for adequately disclosing all risk, including the risk of severe weather?

Ms. PEIRCE. Yes, I mean, I think companies need to be thinking of a broad array of risks, and that includes cybersecurity and weather, as you described. And I think it is helpful to have Corp. Fin. looking at disclosures across industries so they can get an idea of a company's ability to disclose particular types of things. You obviously do not want to have speculation in disclosure documents, but you do want shareholders to have a real sense of the whole array of risks that companies face.

Senator SCHATZ. Thank you.

Mr. Jackson.

Mr. JACKSON. Thank you, Senator. As we were discussing earlier, materiality really is the touchstone of the securities laws and the disclosure mandates. And one of the things that we think about when we wonder about whether something is material is whether shareholders are interested in it, whether that is something that shareholders are focused on. And so more and more, shareholders are pressing companies to better understand these risks, and that signals to me that this might be something increasingly important that we need to make sure these companies come forward with disclosures on.

So I would very much hope that Corporation Finance is thinking about those questions, and I think it is important to point out that in that back and forth between the Division of Corporation Finance and a company, they really should be pressing and making sure: Have you thought through whether you have material climate risk? And if the answer is yes, sir, that should be disclosed.

Senator SCHATZ. Thank you, and I will stay with you, Mr. Jackson. The question is on stock buybacks. Since the SEC issued Rule 10b-18 in 1982, which effectively removed barriers to stock buybacks, the amount of money companies have put into stock buybacks has ballooned to over $700 billion in 2016. Companies have choices when they decide how to spend their extra cash, and more and more they choose not to spend it on their workforce, on capital investments, or R&D. When they have extra cash, they immediately pass it on to shareholders. This is not a good thing for these companies or for the economy.

Looking at the performance of companies on the S&P 500, we see that companies that spent the most on shareholder payouts underperformed companies with the highest spending on capital investments and R&D. We may wonder what has happened to productivity in our economy, but I think the answer, at least partly, has to do with the choices that the SEC made.

Do you think that the enormous scale of stock buybacks is a problem for economic growth and the economy generally?

Mr. JACKSON. Senator, I am worried—I think you are right to raise the concern—that what is happening with buybacks is companies are consistently choosing not to invest in their employees, in their communities, in the future, and I——

Senator SCHATZ. Just in the interest of time, for both of you, are you willing to reconsider that rule passed, which obviously precipitated a golden age of buybacks? And I have 30 seconds, so I will start with you, Mr. Jackson.

Mr. JACKSON. Absolutely, sir.

Senator SCHATZ. Ms. Peirce.

Ms. PEIRCE. I am willing to look at the rule, which has been on the books for a while, and so it could be looked at again.

Senator SCHATZ. Thank you very much.

Chairman CRAPO. Thank you very much, Senator Schatz, and that does conclude the questioning.

Before I conclude, although I will wrap up the hearing, I want to again thank each one of you for agreeing to attend and participate in today's hearing and your willingness to serve our country. You are strong candidates, and I believe you will all have the support of the Senate to move into your positions and be confirmed.

For Senators, all questions for the record need to be submitted by Thursday, close of business, and for our witnesses, responses to those questions we ask be due by Monday morning. So you will have a little bit of work to do, assuming that there are questions. Usually there are some, and usually they are not overwhelming. But we ask you to get them to us on Monday morning if you can.

With that, this hearing is adjourned.

[Whereupon, at 11:42 a.m., the hearing was adjourned.]

[Prepared statements, biographical sketches of nominees, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF DAVID J. RYDER

TO BE DIRECTOR OF THE UNITED STATES MINT

OCTOBER 24, 2017

I would like to first introduce my family who are joining me here today. My wife of 35 years Monie, our son Nick, and our daughter Caroline Ryder.

Thank you, Mr. Chairman, Senator Brown, and distinguished Members of the Committee for allowing me to appear before you today. Mr. Chairman, my siblings and I still own a small piece of land outside of McCall, so I do my best to get out to Idaho at least once a year to visit family and spend a little time enjoying all that the great State of Idaho has to offer.

First, I must say that I am honored that President Trump has nominated me to serve as the 39th Director of the United States Mint.

As you are aware, in 1992, I was nominated by President George H.W. Bush to be the 34th Director of the Mint. I received a recess appointment at that time and served for a period of 14 months.

When I left the Government in 1994, I became a partner with Secure Products, a new venture spin-off from the Sarnoff Corporation in Princeton, NJ, formally the central research laboratories for the RCA Corporation. Our mission was to develop advanced anti-counterfeiting technology solutions to be primarily used in currency and branded products. After a successful 13 years in business, the Honeywell Corporation acquired Secure Products in 2007. The ensuing 10 years was spent with Honeywell as their Global Business Development Manager and Managing Director for Currency.

In my role at Honeywell, I worked with Government agencies and central banks around the world to address currency issues. Interestingly, one of my last duties while at Honeywell was a joint project with The Royal Mint of the United Kingdom where we assisted them in the development of the new U.K. One Pound Coin, which was introduced earlier this year. This new circulating coin is considered to be the most advanced and secure coins in circulation today.

If confirmed, I would like to make education one of my focal points at the Mint. As the 34th Mint Director, we introduced an initiative called the Money Story. The goal of this initiative was to educate the youth of this Nation on the history of money, both coinage and paper currency, via a teacher's curriculum and video co-developed by the U.S. Mint and the Bureau of Engraving and Printing. This packet of information was made available to all teachers for use in the classroom. Teaching our youth early on how to collect coins and other numismatic products, as well as how to start saving their hard-earned money, helps lay the foundation of the importance of money. Over the years, the Mint has continued this excellent tradition via various education tools which are located on their website.

Having worked in the currency industry for the past 25 plus years, I have developed a strong operational and technical understanding of this tight-knit industry. I respect the men and women who dedicate their lives to this industry. During my time with Secure Products and Honeywell, I was afforded the opportunity to visit and work with many private and Government currency manufactures here in the United States, as well as around the world. I will bring to the Mint Director position a strong understanding of the industry and many of the challenges it faces.

If confirmed, it would be an honor to once again serve in our Government and work with this Committee. The U.S. Mint has an impressive history and I look forward to becoming part of that history again. As in all businesses, I am sure the Mint has challenges to address. I look forward to facing these challenges while at the same time fulfilling its mission.

Thank you.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name:

Ryder **David** **Jerome**

Position to which nominated: Director of the United States Mint

Date of nomination:

Date of birth: 10/14/1955 **Place of birth: Billings, Montana**

Marital Status: Married **Full name of spouse: Margaret Mary Ryder**

Name and ages of children: Nicholas William Ryder (30)

Caroline Murphy Ryder (27)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Boise State University	1974/75	None	N/A

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

- United States Department of the Treasury Meritorious Service Award
- Honeywell Specialty Products Achievement Award
- Honeywell Performance Materials and Technology Presidents Club Award
- European Patent Specification Award # EP 2 272 504 B1 for Machine Readable Security Elements and Products Containing Them

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
N/A		

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

HONEYWELL – Performance Materials and Technologies - Authentication Technologies
Global Business Development Manager and Managing Director for Currency (Nov. '07- Resgined 5/15/17)
Morris Plains, NJ

SECURE PRODUCTS
President and CEO (Feb. '94 – Nov. '07)
Summit, NJ

UNITED STATES DEPARTMENT OF THE TREASURY
Director, United States Mint (Jan. '90 - Feb. '94)

Deputy Treasurer of the United States

Washington, DC

OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES
Deputy Chief of Staff (Jan. '89 - Jan. '90)

Washington, DC

TCOM SYSTEMS, INC.
Director of Operations (Dec. '86 - Nov. '88)

Washington, DC

OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES
Assistant to the Vice President & Director of Advance (March '85 - Dec. '86)

Washington, DC

UNITED STATES DEPARTMENT OF COMMERCE
Commissioner General of Section - Director of U.S. Pavilion

Lousiania World Exposition (April '83 - Feb. '85)

New Orleans, LA

OFFICE OF THE VICE PRESIDENT OF THE U.S.
Deputy Director of Advance (April '82 - March '83)

Washington, DC

UNITED STATES DEPARTMENT OF ARGICULTURE
Special Assistant to the Secretary (Feb '81 - April '82)
Washington, DC

REAGAN/BUSH FOR PRESIDENT (Oct '79 - Nov '80)
Volunteer
Alexandria, VA

FLOOR BROKERS ASSOCIATES – NY COMMODITIES EXCHANGE (April '77 - Nov '79)
Brokers Assistant
New York, NY

AMERICAN FREEDON TRAIN
Operations
Falls, Church, VA

(Oct '75 – March '77)

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Directed Vice Presidential Advance operations for Richard B. Cheney's visits to Afghanistan from 2005 to 2007.
Deputy Director of Operations, 2004 Republican National Convention
Directed Advance Operations for the 2002 NATO Rome Summit for President George W. Bush
Deputy Director of Operations, 2001 Republican National Convention.
Director of Operations, 1988 George H.W. Bush Presidential Transition Team
Director of Operations, 1988 Republican National Convention for Vice President Bush

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

N/A

Political Affiliations and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

N/A

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

N/A

Qualifications: State fully your qualifications to serve in the position to which you have been named. (See Attachment "A")

Future employment relationships: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

NO

3. Has anybody made you a commitment to a job after you leave government?

NO

4. Do you expect to serve the full term for which you have been appointed?

YES

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

   None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

   None

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

   While I was employed with Honeywell, I had business dealings with the U.S. Treasury Department's Bureau of Engraving and Printing regarding currency issues, as well as the U.S. Department of State regarding the issuance of new U.S. Passports.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

   None

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

   If required, I will explain my Honeywell business dealings and anything else of any concern with the appropriate government officials.

Civil, criminal and investigatory actions:

1. Give the full derails of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

   None

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

   None

Attachment "A"

Personal Qualifications to Serve Statement

for

David J. Ryder

For the past 10 years, I was employed as Global Business Development Manager & Managing Director for Currency, Authentication Technologies (AT), Honeywell Corporation. AT developed, manufactured, and sold covert and forensic anti-counterfeiting technology for the authentication of currency, value documents and brand related products. Additionally, Authentication Technologies developed electronic detectors that revealed otherwise invisible marks for both manual, and high-speed authentication of currency, passports, bank checks, and other commercial products. I directly managed all high-profile national central bank customers, U.S. and foreign government agencies, and corporate customer relationships. I was responsible for defining the marketing and sales strategy for the AT business, as well as assisted in managing our technology team by developing state-of-the-art highly advanced technology products and processes relevant to our core central bank customer requirements. I also kept the business abreast of relevant developments in the global currencies markets. Customers included the U.S. Treasury Department, the Bank of England, the European Central Bank, the British Royal Mint, the Reserve Bank of India, the Bank of Thailand and others.

From 2014 to 2017, I worked closely with the British Royal Mint, as AT assisted in the development their new British One Pound circulating coin, which was introduced in 2017. The technology employed in the coin is considered the most technically advanced and secure coin in the world today. In addition to working with the British Royal Mint, I've worked with other global mints and bullion manufactures in the development of gold and silver bullion anti-counterfeiting technologies.

Prior to joining Honeywell in November 2007, I was Chief Executive Officer of Secure Products Corporation, a corporate spin-off of the David Sarnoff Research Center. Secure Products, a privately-owned company, focused on anti-counterfeiting technologies sold primarily to brand owners and global Central Banks. Customers included the U.S Treasury Department, the Bank of England, and the European Central Bank. **Secure Products was acquired by the Honeywell Corporation in 2007.**

In 1992, I was appointed Director of the United States Mint, U.S. Department of the Treasury by President George H.W. Bush. As Mint Director, I was responsible for the oversite of the Mint's annual budget and the production of 17 billion circulating coins per year, which produced over $300 million in seigniorage profits to help finance the federal dept. We also manufactured and sold gold and silver bullion coins, as well as other numismatic and commemorative coin products generating additional profits to the treasury.

Immediately preceding this appointment, I served as Deputy Treasurer of the United States, providing management oversight to the U.S. Mint, the Bureau of Engraving and Printing, and the U.S. Savings Bonds Division. I also was a member of the U.S. Treasury Department's Advanced Anti-Counterfeit Deterrence Committee, whose members consisted of representatives from the Bureau of Engraving and Printing, United States Secret Service and the Federal Reserve Bank. Prior to joining the Treasury

Department, I served in the Bush / Quayle Administration as Assistant to the Vice President and Deputy Chief of Staff overseeing the operational aspects of the Office of the Vice President.

Below I have listed additional experience that give credence to my overall management abilities:

- Directed Advance operations for Vice President Richard B. Cheney's visits to Afghanistan from 2005 to 2007
- Deputy Director of Operations, 2004 Republican National Convention
- Deputy Director of Operations, 2001 Republican National Convention
- Director of Operations, 1988 George H.W. Bush Presidential Transition Team
- Director of Operations, 1988 Republican National Convention for Vice President Bush
- Commissioner General of Section and Director of U.S. Pavilion for the 1984 Lousiania World Exposition – U.S. Department of Commerce

Over the years, I have built relationships with many Central Banks and related organizations. I have broad experience dealing with highly technical currency and coinage issues. Combine this experience with my broad management experience serving in various positions within U.S. Government and private sector, as well as having served as the 34th Mint Director previously makes me uniquely qualified to serve as the 39th U.S. Mint Director.

PREPARED STATEMENT OF HESTER M. PEIRCE

TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

OCTOBER 24, 2017

Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you for considering my nomination. It is an honor to be nominated by the President, alongside Professor Robert Jackson, to be a member of the Securities and Exchange Commission (SEC). I welcome the opportunity, if I am confirmed, to work to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation—the three interrelated and complementary aspects of the SEC's mission.

I have spent nearly two decades working on financial regulation. I studied economics at Case Western Reserve University and law at Yale. After a judicial clerkship, I was an associate in the securities practice group of a large law firm. I then spent 8 years at the SEC. I first worked as a staff attorney in the division that regulates mutual funds and investment advisers. As a counsel for Commissioner Paul Atkins, I was able to work on a broader array of issues. Following my time at the SEC, I had the privilege of serving on the staff of Senator Richard Shelby on this Committee. Now I am a Senior Research Fellow and Director of the Financial Markets Working Group at the Mercatus Center at George Mason University, where I have learned much from my colleagues' economic and regulatory expertise.

I desire to return to the SEC because I believe that individuals, institutions, and innovation are important to our capital markets and the broader society.

Properly functioning capital markets enable our society to draw on each individual's unique set of talents, experiences, relationships, and knowledge. An entrepreneur's vision comes to life because we have markets that enable her to share that vision with others who have money to invest. Investors' funds pay the salaries that unlock the potential of other individuals in society. The returns investors make are used to educate the next generation of entrepreneurs and employees.

Individuals trust their fortunes and futures to the capital markets because these markets have grown up within a robust institutional framework. Without strong institutions, people would not use the capital markets. An effective institutional framework establishes reasonable rules, fosters compliance, and swiftly pursues violations when they occur. It does all of these things with an unwavering commitment to due process. The SEC is a key part of our institutional framework. It is therefore incumbent on the SEC to lay out clear rules, enforce them diligently and impartially, and modernize them when necessary.

If regulation is appropriately flexible, innovation can bring new investors into the financial markets, lower prices, and improve the quality of financial products and services. Innovation forces existing companies to stay on their toes and pushes them aside when they fail to meet people's needs. A regulatory structure that blocks new firms or prohibits innovation lets existing companies grow complacent to the detriment of the rest of the economy. By contrast, a regulatory system that invites competition ensures that the capital markets work for Main Street.

I look forward, if I am confirmed, to working with Chairman Clayton, my fellow commissioners, and the SEC staff to implement, enforce, and modernize rules that support healthy, dynamic capital markets. Together we can ensure that the U.S. capital markets work effectively for individuals and companies across this country, are supported by strong institutions, and accommodate innovation.

Thank you. I would be happy to answer your questions.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name:

Peirce	Hester	Maria

Position to which nominated: Commissioner, Securities and Exchange Commission

Date of nomination: 19 July 2017

Date of birth: 12 October 1970 **Place of birth:** Cleveland, Ohio

Marital Status: Single **Full name of spouse:** N/A

Name and ages of children: N/A

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Yale Law School	Fall 1994-Spring 1997	JD	June 1997
Technical University of Vienna	Fall 1993-Spring 1994	N/A	N/A
Case Western Reserve University	Fall 1989-Spring 1993	BA	May 1993
Mayfield High School	Fall 1985-Spring 1988	High School	June 1988
USDA Graduate School	2000-2001	N/A	N/A

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

Fulbright Scholarship, Austria 1993-1994
College Awards

- Phi Beta Kappa
- Grawemeyer Scholarship for Study in Germany
- McMyler Award for Economics
- Barloon Award for Economics
- Kilpatrick Scholar/Athlete Award,
- Folberth Prize for German
- Grawemeyer Award for Research in Germany

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office	Dates
Investor Advisory Committee	Member	2014 to Present (inactive during prior nomination to SEC and inactive now due to current nomination)
District of Columbia Bar	Member	1999 to Present
District of Columbia Bar Small and Emerging Business Committee of the Corporation, Finance, and Securities Law Section	Co-Chairman	2014-2015
Ohio Bar	Member (inactive currently)	1998-Present (Inactive Status: April 23, 1998 to October 15, 1998 and September 1, 1999 to Present)
Federalist Society	Member	1997, 2006, 2011 to Present
Weekly Bible Study Group	Co-leader	2013 to Present
Rockville Bible Fellowship	Member	1998 to Present
American Institute for Economic Research	Member	2000-2008
Literacy Volunteers of America	Literacy Volunteer	2002-2006
George Washington University Hospital Volunteer Program	Volunteer	2000 (est.)-2002 (est.)
American Council on Germany	Member	2007 to Present
Concerned Women for America	Member	2002 (est.) to 2013 (est.)
Career Fellowship at McLean Presbyterian Church	Member	2003 (est.) to 2007 (est.)
Libertarian Party of D.C.	Member	1999 (est.) to 2003 (est.)
Libertarian Party	Member	1992 (est.) to 2009 (est.)
Yale Law School Temporary Restraining Order Project	Member	1994
Yale Law School Federalist Society	Member	1994 (est.) to 1997
Yale Law Christian Fellowship	Member/Officer	1994 to 1997
Catholic Law Students' Association	Member	1994 to 1996 (est.)
Yale Law Students for Life	Member	1994 (est.) to 1997 (est.)
Yale Environmental Law Association	Member	1994 (est.) to 1996 (est.)
St. Mary's Catholic Church	Member	1994 to 1997
Morris Tyler Moot Court of Appeals Project at Yale Law School	Member	1995 (est.) to 1996 (est.)
Intervarsity Christian Fellowship	Member	1989 to 1993

Case Western Reserve University Cross Country and Track Teams	Member/Captain	1989-1993 (captain during part of this period)
Economics Honors Society at Case Western Reserve University	Member/Office	1991 (est.) to 1993
Phi Beta Kappa	Member	1993 (est.) to Present
National Parks Conservation. Association	Member	2013 (est.) to 2014 (est.)

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Director of Financial Markets Working Group (2014-present) and Senior Research Fellow, Mercatus Center at George Mason University, Arlington, VA (January 2012-Present)

Adjunct Professor, George Mason University Law School, Arlington, VA (Spring 2014 & Spring 2015)

Member, Investor Advisory Committee, Securities and Exchange Commission, Washington, DC (August 2014 to Present)

Senior Counsel, Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC (August 2008-December 2011)

Counsel to Commissioner Paul Atkins, Securities and Exchange Commission, Washington, DC (June 2004-August 2008)

Staff Attorney, Division of Investment Management, Securities and Exchange Commission, Washington, DC (April 2000-June 2004)

Associate, Wilmer, Cutler & Pickering (now WilmerHale), Washington, DC (Fall 1998-March 2000)

Clerk to Judge Roger Andewelt, Court of Federal Claims, Washington, DC (Fall 1997-Fall 1998)

Summer Associate, Jones Day, Cleveland, OH (Summer 1997)

Summer Associate, Choate Hall & Stewart, Boston, MA (Summer 1996)

Summer Associate, Squire Sanders, Cleveland, OH (Summers 1995-96)

Fulbright Scholarship Recipient, Vienna, Austria (Fall 1993-Summer 1994)

Research Assistant, Center for Regional Economic Issues at Case Western Reserve University, Cleveland, OH (Summer 1993)

Government experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Nominee for Securities and Exchange Commission (2015-2016)

Member, Investor Advisory Committee to the Securities and Exchange Commission, Washington, DC (2014 to Present)

Senior Counsel, Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC (August 2008-December 2011)

Counsel to Commissioner Paul Atkins, Securities and Exchange Commission, Washington, DC (June 2004-August 2008)

Staff Attorney, Division of Investment Management, Securities and Exchange Commission, Washington, DC (April 2000-June 2004)

Clerk to Judge Roger Andewelt, Court of Federal Claims, Washington DC (Fall 1997-Fall 1998)

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Books
Hester Peirce and Benjamin Klutsey, eds., Reframing Financial Regulation: Enhancing Stability and Protecting Consumers (Mercatus Center at George Mason University 2016).

Hester Peirce and James Broughel, eds., Dodd-Frank: What It Does and Why It's Flawed (Mercatus Center at George Mason University 2012).

Book Chapters
Mark Calabria, Norbert Michel, and Hester Peirce, *Reforming the Financial Regulators*, in Prosperity Unleashed (Norbert Michel, ed. Heritage Foundation 2017)

Hester Peirce and Vera Soliman, *Rethinking the Swaps Clearing Mandate*, in Reframing Financial Regulation: Enhancing Stability and Proecting Consumers (Hester Peirce and Benjamin Klutsey, eds., Mercatus Center at George Mason University 2016).

Hester Peirce, *Gaining and Shedding Dodd-Frank's Systemically Important Financial Institution (SIFI) Label*, in Legal Risk Management, Governance and Compliance (Stuart Weinstein and Charles Wild, eds., Globe Law and Business 2016), version available at https://www.mercatus.org/system/files/fsoc_designations_with_addendum_mercatus_version.pdf.

Hester Peirce, *Title V and the Creeping Federalization of Insurance Regulation*, in The Case Against Dodd-Frank: How the "Consumer Protection" Law Endangers Americans (Norbert Michel, ed., Heritage Foundation 2016).

Hester Peirce, *The Financial Industry Regulator Authority: Not Self-Regulation After All* in Building Responsible Financial Regulators in the Aftermath of the Global Financial Crisis (Pablo Iglesias-Rosriguez, ed., Intersentia 2015), version available at http://mercatus.org/publication/financial-industry-regulatory-authority-finra-not-self-regulation-after-all.

Articles/Working Papers/Policy Briefs

Hester Peirce, *Dwindling Numbers in the Financial Industry*, Brookings Series on Financial Markets Regulation (May 15, 2017), https://www.brookings.edu/research/dwindling-numbers-in-the-financial-industry/.

Hester Peirce, *Revisiting Dodd-Frank, Mercatus Policy Primer* (Feb. 8, 2017), https://www.mercatus.org/publications/revisiting-dodd-frank.

Hester Peirce, *Derivatives Clearinghouses: Clearing the Way to Failure*, 64 CLEVE. ST. L. REV. 589 (2016).

Hester Peirce, *Regulating through the Back Door at the Commodity Futures Trading Commission*, 2 Harv. J.L. & Pub. Pol'y Federalist Ed. 321 (2015).

Hester Peirce, *Insurance Regulation in the Dodd-Frank Era* (Networks Financial Institute Summit Paper Mar. 17, 2015), http://www.indstate.edu/business/NFI/events/11AIPPS/docs/Insurance-Regulation-Peirce.pdf.

Hester Peirce and Stephen Matteo Miller, Small Banks By the Numbers: 2000-2014 (Mar. 17, 2015), http://mercatus.org/publication/small-banks-numbers-2000-2014.

Hester Peirce, Ian Robinson, and Thomas Stratmann, *How Are Small Banks Faring Under Dodd-Frank?* CATO INSTITUTE RESEARCH BRIEFS IN ECONOMIC POLICY No. 20 (Feb. 18, 2015), http://www.cato.org/publications/research-briefs-economic-policy/how-are-small-banks-faring-under-dodd-frank.

Hester Peirce, *Regulating through the Back Door at the Commodity Futures Trading Commission* (Mercatus Center at George Mason University Working Paper November 2014), http://mercatus.org/sites/default/files/Peirce-Back-Door-CFTC.pdf.

Hester Peirce, *The Financial Industry Regulatory Authority: Not Self-Regulation after All* (Mercatus Center at George Mason University Working Paper January 2015), a version appeared in P. Iglesias-Rodríguez, ed., Building Responsive and Responsible Financial Regulators in the Aftermath of the Financial Crisis (Cambridge:Intersentia, 2015).

James K. Glassman and Hester Peirce, *How Proxy Advisors Became So Powerful* (Mercatus Center at George Mason University Working Paper November 2014), http://mercatus.org/publication/how-proxy-advisory-services-became-so-powerful.

Jerry Ellig and Hester Peirce, *SEC Regulatory Analysis: A Long Way to Go and a Short Time to Get There*, 8 BROOK. J. CORP., FIN. & COM. L. 361(2014).

Hester Peirce, *Securities Lending and the Untold Story in the Collapse of AIG* (Mercatus Center at George Mason University Working Paper 2014), http://mercatus.org/publication/securities-lending-and-untold-story-collapse-aig.

Abby McCloskey and Hester Peirce, Holding Financial Regulators Accountable: A Case for Economic Analysis (American Enterprise Institute Working Paper 2014), http://www.aei.org/publication/holding-financial-regulators-accountable-a-case-for-economic-analysis/.

Hester Peirce, Ian Robinson, and Thomas Stratmann, *How Are Small Banks Faring Under Dodd-Frank?* (Mercatus Center at George Mason University Working Paper 2014), http://mercatus.org/publication/how-are-small-banks-faring-under-dodd-frank.

Hester Peirce and Robert Greene, *Opening the Gate to Money Market Fund Reform*, 34 PACE L. REV. 1093 (2014).

Hester Peirce, *Troubleshooting: Finance and Innovation*, THE AMERICAN INTEREST (Aug. 22, 2014).

Hester Peirce, *Economic Analysis by Federal Financial Regulators*, 9 J. L. ECON. & POL'Y 569 (2013).

Hester Peirce and Robert Greene, *Rethinking the Volcker Rule, Mercatus on Policy* (Jan. 15, 2013), http://mercatus.org/publication/rethinking-volcker-rule.

Hester Peirce and Robert Greene, *The Federal Reserve's Expanding Regulatory Umbrella, Mercatus on Policy* (Apr. 3, 2013), http://mercatus.org/publication/federal-reserves-expanding-regulatory-umbrella.

Testimony and Comments

Hester Peirce, Reforming the Financial System So It Works for the Rest of the System, Testimony before the House Committee on Financial Services (Apr. 26, 2017), https://www.mercatus.org/publications/reforming-financial-system-so-it-works-rest-system.

Mark J. Warshawsky and Hester Peirce, Response to Presidential Memorandum on Fiduciary Duty (Apr. 18, 2017), https://www.mercatus.org/publications/response-presidential-memorandum-fiduciary-duty-rule.

Brian Knight, J.W. Verret, and Hester Peirce, Response to OCC White Paper Exploring Special Purpose National Bank Charters for Fintech Companies (Jan. 17, 2017), https://www.mercatus.org/publications/occ-national-bank-charters-fintech.

Hester Peirce, Statement before the Senate Committee on Banking, Housing, and Urban Affairs (March 15, 2016), https://www.mercatus.org/publication/statement-hester-maria-peirce.

Hester Peirce, Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence, Testimony before the House Committee on Financial Services (June 11, 2015), http://mercatus.org/publication/examining-legislative-proposals-preserve-consumer-choice-and-financial-independence.

Hester Peirce, The Dodd-Frank Act and Regulatory Overreach, Testimony before the House Committee on Financial Services (May 13, 2015), http://mercatus.org/publication/dodd-frank-act-and-regulatory-overreach.

Hester Peirce and Kristine Johnson, Rule Proposal to Implement the Comprehensive Automated Risk Data System (Feb. 4, 2015), https://www.finra.org/sites/default/files/notice_comment_file_ref/14-37_mercatus_comments.pdf.

Hester Peirce and Vera Soliman, Disclosure of Consumer Complaint Narrative Data, Public Interest Comment (Sept. 10, 2014), http://mercatus.org/publication/disclosure-consumer-complaint-narrative-data.

Hester Peirce, Legislation to Reform the Federal Reserve on Its 100-Year Anniversary, Testimony before the House Committee on Financial Services (July 10, 2014), http://mercatus.org/publication/legislation-reform-federal-reserve-its-100-year-anniversary.

Hester Peirce, Increasing the Effectiveness of the Bureau of Consumer Financial Protection in Protecting Consumers, Testimony Before the House Committee on Financial Services (May 21, 2014), http://mercatus.org/publication/increasing-effectiveness-bureau-consumer-financial-protection-protecting-consumers.

Hester Peirce, Rethinking the Federal Reserve's Many Mandates on Its 100-Year Anniversary, Testimony before the House Committee on Financial Services (Dec. 12, 2013), http://mercatus.org/publication/rethinking-federal-reserves-many-mandates-its-100-year-anniversary.

Hester Peirce, Regulatory Landscape: Burden on Small Financial Institutions, Testimony before the House Committee on Small Business (Dec. 3, 2013), http://mercatus.org/publication/regulatory-landscape-burdens-small-financial-institutions

Hester Peirce and Robert Greene, Office of Financial Research Study Titled "Asset Management and Financial Stability," Public Interest Comment (Nov. 1, 2013), http://mercatus.org/publication/office-financial-research-study-titled-asset-management-and-financial-stability.

Hester Peirce and Robert Greene, Money Market Fund Reform; Amendments to Form PF (Sept. 17, 2013), http://mercatus.org/publication/money-market-fund-reform-amendments-form-pf

Hester Peirce, Regulatory Impacts: The Impact of Dodd-Frank on Community Banking, Testimony before the House Committee on Oversight and Government Reform (July 18, 2013), http://mercatus.org/publication/regulatory-burdens-impact-dodd-frank-community-banking.

Hester Peirce, Financial Market Utilities, Public Interest Comment (May 3, 2013), http://mercatus.org/publication/financial-market-utilities.

Robert Hoyt, Karan Bhatia, Lyle Roberts, Hester Peirce, and Christopher Simkins, Brief of Federal Bureau of Investigation Agents Association as Amicus Curiae in Support of the United States Circuit Court of Appeals for the Fourth Circuit (Mar. 9, 2000).

Brandon Becker, Soo Yim, and Hester Peirce, Short Sales: SEC Ponders a Regulatory Overhaul, Wilmer, Cutler & Pickering Securities Law Developments (Nov. 22, 1999), http://www.wilmerhale.com/uploadedFiles/WilmerHale_Shared_Content/Files/Editorial/Publication/sec11-22.pdf.

Op-Eds and Blogs

A full list is appended at Schedule F.

Political Affiliations and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Member, Libertarian Party through 2009.

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

N/A

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet) ***See Schedule E.***

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

As described in my Ethics Agreement, which has been provided to the Committee, if confirmed, I will sever all such connections.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no such plans.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

If confirmed, I will resign from the Mercatus Center at George Mason University and will terminate my outside contributor agreement with the Brookings Institution. I may continue to participate in the 401(k) plan run by WilmerHale. My participation does not include any additional contributions from me or any contributions from WilmerHale.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the U.S. Securities and Exchange Commission's (SEC) Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with the SEC's Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the U.S. Securities and Exchange Commission's (SEC) designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with the SEC's Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the U.S. Securities and Exchange Commission's (SEC) Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with the SEC's Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

Civil, criminal and investigatory actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

SCHEDULE E: STATEMENT OF QUALIFICATIONS

My academic and professional work provide an appropriate background for service as a Commissioner of the Securities and Exchange Commission (SEC).

My undergraduate study of economics gave me important insights about how the financial markets work and their critical role in the broader economy. My legal training highlighted the role that regulation plays in enabling the financial markets to serve effectively. My coursework included classes on securities law and administrative law.

I have spent most of my professional career working on issues related to financial regulation. After law school and a clerkship on the Court of Federal Claims, I joined a large law firm as an associate in the securities department. In that job, I worked on a range of issues from investment company regulation to securities enforcement and litigation. Many of my colleagues were alumni of the Securities and Exchange Commission. Their stories about work at the Commission piqued my interest, and I applied for an opening in the Division of Investment Management.

As a Commission staff attorney, I wrote rules for investment companies. In addition to gaining a deeper understanding of mutual fund regulation, I acquired valuable experience about how the Division and the Commission operate. I learned a tremendous amount about the law and the industry from the seasoned securities attorneys with whom I worked.

After four years in the Division of Investment Management, I was detailed to the office of Commissioner Paul Atkins. This position, which eventually became permanent, provided me broader exposure to the Commission's work and to additional areas of securities law. In my four years in the Commissioner's office, I worked primarily on investment management and enforcement issues, but also got exposure to areas such as corporation finance, accounting, and market regulation. I had a wealth of opportunities to learn from staff across the Commission and from many outside parties—including investors, issuers, regulated entities, and other regulators—with an interest in the issues before the Commission.

Following my time at the Commission, I had the opportunity to work on then Ranking Member Richard Shelby's staff on the Senate Committee on Banking, Housing, and Urban Affairs. Having joined the Committee staff in August 2008, I was quickly immersed in the unfolding financial crisis. The Committee staff sought to understand the regulatory and market factors that contributed to the crisis and to craft a legislative response to the crisis. This undertaking exposed me to many experts with a wide variety of viewpoints and experiences in the financial industry. In addition, frequent interaction with principals and staff from different financial regulatory agencies gave me new insights into the challenges regulators face as they try to craft and implement effective regulations.

After leaving the Committee, I was able to continue my work on financial regulation at the Mercatus Center at George Mason University. In addition to editing and contributing to a book about the Dodd-Frank Act and another about financial regulatory reform, I have written on issues such as money market mutual funds, administrative process, the use of economic analysis at federal financial regulators, and derivatives clearing. I also have had the opportunity to review and provide input on the work of other scholars writing for the Financial Markets Working Group about a wide array of financial regulatory issues. Finally, serving on the SEC's Investor Advisory Committee with an experienced and diverse group of colleagues has helped to shape my views on the importance of investor protection in the SEC's mission.

SCHEDULE F: ADDITIONAL PUBLICATIONS

Hester Peirce and Vera Soliman, The CFPB's Animated Approach to Financial Regulation, FinRegRag (July 12, 2017), https://finregrag.com/the-cfpbs-animated-approach-to-financial-regulation-e526a5b71e5d?source=collection_home---6------2----------.

Hester Peirce, Finance Is in the Midst of a Regulatory Reform Quilting Bee, Real Clear Markets (June 29, 2017), http://www.realclearmarkets.com/articles/2017/06/29/finance_is_in_the_midst_of_a_regulatory_reform_quilting_bee_102765.html.

Hester Peirce, Dodd-Frank Do-Over, FinRegRag (June 8, 2017), https://finregrag.com/dodd-frank-do-over-9a3870d769bc?source=collection_home---6------7----------.

Hester Peirce, Choice: OLA versus BOLA, FinRegRag (June 6, 2017), https://finregrag.com/dodd-frank-do-over-9a3870d769bc?source=collection_home---6------7----------.

Hester Peirce, The OLA: Concept and Reality, FinRegRag (May 26, 2017), https://finregrag.com/the-ola-concept-and-reality-395880d42b99?source=collection_home---6------11----------.

Hester Peirce, Seven Core Principles in Delayed Action, FinRegRag (May 23, 2017), https://finregrag.com/seven-core-principles-in-delayed-action-9379e4525173?source=collection_home---6------13----------.

Hester Peirce, Eliminating Dodd-Frank's Overrated Escape Hatch, Real Clear Markets (May 25, 2017), http://www.realclearmarkets.com/articles/2017/05/25/eliminating_dodd-franks_overrated_escape_hatch_102707.html.

Hester Peirce, Rethinking Regulatory Framework, U.S. News & World Report (May 22, 2017), https://www.usnews.com/opinion/economic-intelligence/articles/2017-05-22/seven-core-principles-to-reform-the-financial-regulatory-system.

Hester Peirce, Where Have All the BDs and FCMs Gone?, FinRegRag (May 17, 2017), https://finregrag.com/where-have-all-the-bds-and-fcms-gone-8e81b1a6d1e2?source=collection_home---6------15----------.

Hester Peirce, Following the Fiduciary Rule, FinRegRag (May 15, 2017), https://finregrag.com/where-have-all-the-bds-and-fcms-gone-8e81b1a6d1e2?source=collection_home---6------15----------.

Hester Peirce, Five Questions about the DOL Fiduciary Rule, On the Regs (May 15, 2017), https://ontheregs.com/2017/05/15/five-questions-about-the-dol-fiduciary-rule/.

Hester Peirce, Big Bailout Court Bout, FinRegRag (May 10, 2017), https://finregrag.com/big-bailout-court-bout-b38355ac74ff?source=collection_home---6------18----------.

Hester Peirce, Highlights of the Financial Regulatory Week, FinRegRag (May 5, 2017), https://finregrag.com/highlights-of-the-financial-regulatory-week-65c605f5da5d?source=collection_home---6------20----------.

Hester Peirce, It's Springtime in Washington, and Regulatory Reform Blossoms, Real Clear Markets (Apr. 17, 2017), http://www.realclearmarkets.com/articles/2017/04/17/its_springtime_in_washington_and_regulatory_reform_blossoms_102634.html.

Hester Peirce, Governor Tarullo Bids Farewell, FinRegRag (Apr. 5, 2017), https://finregrag.com/governor-tarullo-bids-farewell-1eeba7426dc9?source=collection_home---6------5-----------.

Hester Peirce, This Week in Financial Regulation, FinRegRag (Mar. 24, 2017), https://finregrag.com/this-week-in-financial-regulation-20017b1464e7?source=collection_home---6------7-----------.

Brian Knight, J.W. Verret, and Hester Peirce, The OCC's Unimaginative Approach to Innovation, Real Clear Markets (Mar. 20, 2017), http://www.realclearmarkets.com/articles/2017/03/20/the_occs_unimaginative_approach_to_innovation_102596.html.

Hester Peirce, OCC's Fintech Charter Takes Shape, FinRegRag (Mar. 20, 2017), https://finregrag.com/occs-fintech-charter-takes-shape-eeeb0e37cd76?source=collection_home---6------8-----------.

Hester Peirce, CFPB and the Divided DC Circuit, FinRegRag (Mar. 14, 2017), https://finregrag.com/cfpb-and-the-divided-dc-circuit-c0a2df17d8ce?source=collection_home---6------11-----------.

Hester Peirce, Clearing, Recovering, and Resolving, Brookings Series on Financial Markets and Regulation (Feb. 27, 2017), https://www.brookings.edu/research/clearing-recovering-and-resolving/?utm_source=feedblitz&utm_medium=FeedBlitzRss&utm_campaign=brookingsrss/topfeeds/latestfrombrookings.

Hester Peirce and Vera Soliman, Business as Usual at the CFPB Is Not Good for Consumers, Real Clear Markets (Feb. 23, 2017), http://www.realclearmarkets.com/articles/2017/02/23/business_as_usual_at_the_cfpb_is_not_good_for_consumers_102557.html.

Hester Peirce, Boiling Down Dodd-Frank, FinRegRag (Feb. 9, 2017), https://finregrag.com/boiling-down-dodd-frank-9b78e3e65185.

Hester Peirce, Rethinking the DOL's Approach to Investor Protection, FinRegRag (Feb. 6, 2017), https://finregrag.com/rethinking-the-dols-approach-to-investor-protection-e605d62911c2?source=collection_home---6------20-----------.

Hester Peirce, Quick Take: Presidential Financial Regulatory Reform Plan, FinRegRag (Feb. 3, 2017), https://finregrag.com/quick-take-presidential-financial-regulatory-reform-plan-59f96745126a?source=collection_home---6------23-----------.

Hester Peirce, Rethinking the Resource Extraction Rule, FinRegRag (Feb. 1, 2017), https://finregrag.com/rethinking-the-resource-extraction-rule-686b5c766f38?source=collection_home---6------24-----------.

Hester Peirce, Failure to Repeal Dodd-Frank Is What Should Have Us Scared, Real Clear Markets (Jan. 19, 2017), http://www.realclearmarkets.com/articles/2017/01/19/failure_to_repeal_dodd-frank_is_what_should_have_us_scared_102508.html.

Hester Peirce, It's Not Glamorous, But a Very Necessary Financial Reform, Real Clear Markets (June 3, 2015), http://www.realclearmarkets.com/articles/2015/06/03/its_not_glamorous_but_a_very_necessary_financial_reform_101691.html.

Hester Peirce, Five Years Later, Dodd-Frank Is Looking Pretty Haggard, Real Clear Markets (May 20, 2015), http://www.realclearmarkets.com/articles/2015/05/20/five_years_later_dodd-frank_is_looking_very_haggard_101675.html.

Hester Peirce, Investors Are Eager to Fund a Responsible Puerto Rico, Real Clear Markets (May 6, 2015), http://www.realclearmarkets.com/articles/2015/05/06/investors_are_eager_to_fund_a_responsible_puerto_rico_101654.html.

Hester Peirce, The CFPB, Not What It Was Hoped To Be, The Hill (Apr. 29, 2015), http://thehill.com/blogs/pundits-blog/finance/240422-the-cfpb-not-what-it-was-hoped-to-be.

Hester Peirce, Regulation in the Form of Big Bank Coercion, Real Clear Markets (Apr. 22, 2015), http://www.realclearmarkets.com/articles/2015/04/22/regulation_in_the_form_of_big_bank_coercion_101634.html.

Hester Peirce, Bank Shareholders and Customers Take Backseat to Regulators, Real Clear Markets (Apr. 7, 2015), http://www.realclearmarkets.com/articles/2015/04/08/bank_shareholders_and_customers_take_backseat_to_regulators_101611.html.

Hester Peirce, Consumers Are Much More Powerful Than Their Government Protectors, Real Clear Markets (Mar. 25, 2015), http://www.realclearmarkets.com/articles/2015/03/25/consumers_are_much_more_powerful_than_their_government_protectors_101596.html.

Hester Peirce and Stephen Matteo Miller, The Small Bank Slide, The Hill (Mar. 23, 2015), http://thehill.com/blogs/pundits-blog/finance/236572-the-small-bank-slide.

Hester Peirce, We Must Resist Becoming "Bank-Centric" in the US, Real Clear Markets (Mar. 11, 2015), http://www.realclearmarkets.com/articles/2015/03/11/we_must_resist_becoming_bank-centric_in_the_us_101573.html.

Hester Peirce, No, Mr. Tarullo, We're Not All Macroprudentialists Now, Real Clear Markets (Feb. 25, 2015), http://www.realclearmarkets.com/articles/2015/02/25/no_mr_tarullo_were_not_all_macroprudentialists_now_101548.html.

Hester Peirce, Previewing the President's Announcement Changing the Fiduciary Standard (Feb. 23, 2015), http://mercatus.org/expert_commentary/previewing-presidents-announcement-changing-fiduciary-standard-financial-services-regulation.

Hester Peirce, Scrap Regulations that Thin the Ranks of Small Banks, American Banker (Feb. 23, 2015).

Hester Peirce, In Washington 'Austerity' is a 67% Budget Increase, Real Clear Markets (Feb. 11, 2015), http://www.realclearmarkets.com/articles/2015/02/11/in_washington_austerity_is_a_67_budget_increase.html.

Hester Peirce, What Australia Can Teach Us About Regulatory Hoarding, Real Clear Markets (Jan. 28, 2015), http://www.realclearmarkets.com/articles/2015/01/28/what_australia_can_teach_us_about_regulatory_hoarding_101508.html.

Hester Peirce, MetLife Goes to Court, The Hill (Jan. 16, 2015), http://thehill.com/blogs/pundits-blog/finance/229701-metlife-goes-to-court.

Hester Peirce, Dodd-Frank Most Likely to Be at the Root of a Future Crisis, Real Clear Markets (Jan. 14, 2015), http://www.realclearmarkets.com/articles/2015/01/14/dodd-frank_most_likely_to_be_at_the_root_of_a_future_crisis_101485.html.

Hester Peirce and Kristine Johnson, FINRA's Holiday 'CARDS', The Hill (Jan. 8, 2015), http://thehill.com/blogs/pundits-blog/finance/228908-finras-holiday-cards.

Hester Peirce, Laws Against 'Insider Trading' Come at a Great Cost, Real Clear Markets (Dec. 31, 2014), http://www.realclearmarkets.com/articles/2014/12/31/laws_against_insider_trading_come_with_a_great_cost_101451.html.

Hester Peirce, Drawn Up in the Dark of Night, Dodd-Frank's Uninteneded Consequences, Real Clear Markets (Dec. 17, 2014), http://www.realclearmarkets.com/articles/2014/12/17/drawn_up_in_the_dark_of_night_dodd-franks_unintended_consequences_101443.html.

Hester Peirce, Financial Industry Should Be Its Own Knight in Shining Armor, American Banker (Dec. 9, 2014).

Hester Peirce, Regulators Foist Do As We Say Not As We Do on Wall Street, Real Clear Markets (Dec. 3, 2014), http://www.realclearmarkets.com/articles/2014/12/03/regulators_apply_do_as_we_say_not_do_as_we_do_on_wall_street_101414.html.

Hester Peirce, CFTC Rulemaking Process Needs Greater Scrutiny, Transparency (Nov. 28, 2014), http://news.heartland.org/newspaper-article/2014/11/28/cftc-rulemaking-process-needs-greater-scrutiny-transparency/.

Hester Peirce, A New Congress Must Perform Major Surgery on Dodd-Frank, Real Clear Markets (Nov. 19, 2014), http://www.realclearmarkets.com/articles/2014/11/19/a_new_congress_must_perform_major_surgery_on_dodd-frank_101397.html.

Hester Peirce, Backdoor and Backroom Regulation, The Hill (Nov. 10, 2014), http://thehill.com/blogs/pundits-blog/finance/223472-backdoor-and-backroom-regulation.

Hester Peirce, Regulatory Paranoia Is a Barrier to Wealth Creation, Real Clear Markets (Nov. 5, 2014), http://www.realclearmarkets.com/articles/2014/11/05/regulatory_paranoia_is_a_barrier_to_wealth_creation_101371.html.

Hester Peirce, Sorry William Dudley, Regulation Itself is the Culture Killer, Real Clear Markets (Oct. 22, 2014), http://www.realclearmarkets.com/articles/2014/10/22/sorry_william_dudley_regulation_itself_is_the_culture_killer_101349.html.

Hester Peirce, License to Invest, The Hill (Oct. 15, 2014), http://thehill.com/blogs/pundits-blog/finance/220788-license-to-invest.

Hester Peirce, Hank Greenberg's AIG Suit Could Crush 'Too Big to Fail,' Real Clear Markets (Oct. 8, 2014), http://www.realclearmarkets.com/articles/2014/10/08/hank_greenbergs_aig_lawsuit_could_crush_too_big_to_fail_101315.html.

Hester Peirce, Banking Regulators Could Use a Lesson in Humility from Hayek, American Banker (Sept. 30, 2014).

Hester Peirce, Judge to CFTC: Heads You Win, Tails You Win Too, Real Clear Markets (Sept. 24, 2014), http://www.realclearmarkets.com/articles/2014/09/24/judge_to_cftc_heads_you_win_tails_you_win_too_101289.html.

Hester Peirce, Let the Markets Fix Ratings Agencies, Real Clear Markets (Sept. 10, 2014), http://www.realclearmarkets.com/articles/2014/09/10/let_the_markets_fix_the_ratings_agencies_101270.html.

Hester Peirce, The Helicopter Parents at the FSOC Are Running With Scissors, Real Clear Markets (Aug. 27, 2014), http://www.realclearmarkets.com/articles/2014/08/27/the_helicopter_parents_at_the_fsoc_are_running_with_scissors_101246.html.

Hester Peirce, Bank of America's Opaque Penance, The Hill (Aug. 25, 2014), http://thehill.com/blogs/pundits-blog/finance/215871-bank-of-americas-opaque-penance.

Hester Peirce, 'Living Wills' for Banks Are Pointless Without Market Discipline, Real Clear Markets (Aug. 13, 2014), http://www.realclearmarkets.com/articles/2014/08/13/living_wills_for_banks_are_pointless_without_market_discipline_101227.html.

Hester Peirce, Treading the Regulatory Waters, PointofLaw.com (Aug. 13, 2014), http://www.pointoflaw.com/archives/2014/08/treading-the-regulatory-waters.php#more.

Hester Peirce, Dodd-Frank: A Success Story?, PointofLaw.com (Aug. 4, 2014), http://www.pointoflaw.com/archives/2014/08/dodd-frank-a-success-story.php#more.

Hester Peirce, Dodd-Frank's Birthday Marred By Its Many Inadequacies, Real Clear Markets (July 30, 2014), http://www.realclearmarkets.com/articles/2014/07/30/dodd-franks_birthday_marred_by_its_many_inadequacies_101197.html.

Hester Peirce, Dodd-Frank at War with Itself, Washington Examiner (July 25, 2014), http://www.washingtonexaminer.com/dodd-frank-at-war-with-itself/article/2551078.

Hester Peirce, Complaints about the CFPB's Complaint Database, The Hill (July 22, 2014), http://thehill.com/blogs/pundits-blog/finance/212901-complaints-about-the-cfpbs-complaint-database.

Hester Peirce, Dodd-Frank at Four, PointofLaw.com (July 21, 2014), http://www.pointoflaw.com/archives/2014/07/dodd-frank-at-four.php.

Hester Peirce, The Gaping Hole in the Middle of Dodd-Frank, Real Clear Markets (July 16, 2014), http://www.realclearmarkets.com/articles/2014/07/16/the_gaping_hole_in_the_middle_of_dodd-frank.html.

Hester Peirce, Fish-nancial Fraud, PointofLaw.com (July 11, 2014), http://www.pointoflaw.com/archives/2014/07/fish-nancial-fraud.php#more.

Hester Peirce, Further Entrenching Proxy Advisors, The Hill (July 10, 2014), http://thehill.com/blogs/pundits-blog/211580-further-entrenching-proxy-advisers.

Hester Peirce, Class-Actions & Market Integrity, PointofLaw.com (July 7, 2014), http://www.pointoflaw.com/archives/2014/07/class-actions-market-integrity.php#more.

Hester Peirce, Dodd-Frank Is Not Living Up to Its Promises, Real Clear Markets (July 2, 2014), http://www.realclearmarkets.com/articles/2014/07/02/dodd-frank_is_not_living_up_to_its_promises_101152.html.

Hester Peirce, Stress Tests and Managerial Distraction, PointofLaw.com (June 28, 2014), http://www.pointoflaw.com/archives/2014/06/stress-tests-and-managerial-distraction.php.

Hester Peirce, FINRA's Fines, PointofLaw.com (June 20, 2014), http://www.pointoflaw.com/archives/2014/06/finras-fines.php#more.

Hester Peirce, On Its 80th, How Can the SEC Renew Its Mission?, Real Clear Markets (June 18, 2014), http://www.realclearmarkets.com/articles/2014/06/18/80_years_later_how_can_the_sec_renew_its_mission_101128.html.

Hester Peirce, AIG's Collapse: The Part Nobody Likes to Talk About, American Banker (June 16, 2014).

Hester Peirce, Operation Choke Point's Back Door, PointofLaw.com (June 14, 2014), http://www.pointoflaw.com/archives/2014/06/operation-choke-points-back-door.php.

Hester Peirce, What Not to Do During a Financial Crisis, U.S. News and World Report (June 9, 2014), http://www.usnews.com/opinion/economic-intelligence/2014/06/09/tim-geithners-stress-test-shows-what-government-got-wrong.

Hester Peirce, Second Circuit: Pragmatism Trumps Truth, PointofLaw.com (June 5, 2014), http://www.pointoflaw.com/archives/2014/06/second-circuit-pragmatism-trumps-truth.php#more.

Hester Peirce, 100 Years Later, What's Become of Our Federal Reserve, Real Clear Markets (June 4, 2014), http://www.realclearmarkets.com/articles/2014/06/04/100_years_later_whats_become_of_our_federal_reserve_101099.html.

Hester Peirce, Au Revoir Dollar, PointofLaw.com (May 31, 2014), http://www.pointoflaw.com/archives/2014/05/au-revoir-dollar.php.

Hester Peirce, Getting Federal Financial Regulators to Analyze Before They Regulate, PointofLaw.com (May 22, 2014), http://www.pointoflaw.com/archives/2014/05/getting-federal-financial-regulators-to-analyze-before-they-regulate.php.

Hester Peirce and Abby McCloskey, Unbridled Regulation Sets Stage for Another 2008, Real Clear Markets (May 21, 2014), http://www.realclearmarkets.com/articles/2014/05/21/unbridled_regulation_sets_stage_for_another_2008_101069.html.

Hester Peirce, FSOC Designating in the Dark, PointofLaw.com (May 17, 2014), http://www.pointoflaw.com/archives/2014/05/designating-in-the-dark.php.

Hester Peirce, Conflict Minerals Conflict Continues, PointofLaw.com (May 8, 2014), http://www.pointoflaw.com/archives/2014/05/conflict-minerals-conflict-continues.php.

Hester Peirce, National Mortgage Database: Good for Regulators, Bad for You, Real Clear Markets (May 7, 2014), http://www.realclearmarkets.com/articles/2014/05/07/national_mortgage_database_good_for_regulators_bad_for_you_101042.html.

Hester Peirce, Equalizing Markets, PointofLaw.com (May 3, 2014), http://www.pointoflaw.com/archives/2014/05/equalizing-markets.php.

Hester Peirce, Regulating By Guidance, PointofLaw.com (Apr. 26, 2014), http://www.pointoflaw.com/archives/2014/04/regulation-by-guidance.php.

Hester Peirce, Most Savers Like Money Market Funds the Way They Are Now, Letter to Editor, Wall Street Journal (Apr. 25, 2014).

Hester Peirce, A Bad Report Card for a Security-Righteous SEC, Real Clear Markets (Apr. 23, 2014), http://www.realclearmarkets.com/articles/2014/04/23/a_bad_report_card_for_a_security-righteous_sec_101018.html.

Hester Peirce, Conflict Minerals: Unmeasured Benefits and Unspoken Burdens, PointofLaw.com (Apr. 18, 2014), http://www.pointoflaw.com/archives/2014/04/conflict-minerals-unmeasured-benefits-and-unspoken-burdens.php#more.

Hester Peirce, FDIC Community Bank Analysis Largely Ignores Impact of Regulatory Burden (Apr. 11, 2014), http://mercatus.org/expert_commentary/fdic-community-bank-analysis-largely-ignores-impact-regulatory-burden.

Hester Peirce, Community Banks, Consolidation, and Regulatory Burdens, PointofLaw.com (Apr. 10, 2014), http://www.pointoflaw.com/archives/2014/04/community-banks-consolidation-and-regulatory-burdens.php#more.

Hester Peirce, Regulators on the Beat, PointofLaw.com (Apr. 4, 2014), http://www.pointoflaw.com/archives/2014/04/regulators-on-the-beat.php#more.

Hester Peirce, The Volcker Rule Increases the Likelihood that Banks Will Default, Real Clear Markets (Mar. 26, 2014), http://www.realclearmarkets.com/articles/2014/03/26/the_volcker_rule_increases_the_likelihood_that_banks_will_default_100975.html.

Hester Peirce, Bidding Bye to the Bank, PointofLaw.com (Mar. 26, 2014), http://www.pointoflaw.com/archives/2014/03/bidding-bye-to-the-bank.php.

Hester Peirce and Ian Robinson, Small Banks in the Eye of Dodd-Frank, McClatchy-Tribune (Mar. 20, 2014).

Hester Peirce, CFTC's Aimless Budgeting, PointofLaw.com (Mar. 17, 2014), http://www.pointoflaw.com/archives/2014/03/cftcs-aimless-budgeting.php#more.

Hester Peirce, Ugly Barbie: Is There a Market for Average-Looking Dolls, Real Clear Markets (Mar. 12, 2014), http://www.realclearmarkets.com/articles/2014/03/12/ugly_barbie_is_there_a_market_for_average_looking_dolls_100951.html.

Hester Peirce, Letting Nonbanks Be Nonbanks, PointofLaw.com (Mar. 12, 2014), http://www.pointoflaw.com/archives/2014/03/letting-nonbanks-be-nonbanks.php#more.

Hester Peirce, Activism at Sharehold Expense, PointofLaw.com (Mar. 7, 2014), http://www.pointoflaw.com/archives/2014/03/activism-at-sharehold-expense.php.

Hester Peirce, Anti-Shareholder Class Actions, PointofLaw.com (Mar. 1, 2014), http://www.pointoflaw.com/archives/2014/03/anti-shareholder-class-actions.php#more.

Hester Peirce, Advice with Borders, PointofLaw.com (Feb. 22, 2014), http://www.pointoflaw.com/archives/2014/02/advice-with-borders.php.

Hester Peirce, MyRAs: Bad for Consumers, Bad for Government, Real Clear Markets (Feb. 12, 2014), http://www.realclearmarkets.com/articles/2014/02/12/myras_bad_for_consumers_bad_for_government_100895.html.

Hester Peirce, Does the CFPB Know What's in Your Wallet?, US News and World Report (Feb. 10, 2014), http://www.usnews.com/opinion/economic-intelligence/2014/02/10/why-is-the-cfpb-collecting-so-much-credit-card-data.

Hester Peirce, Suing for Settling, PointofLaw.com (Feb. 10, 2014), http://www.pointoflaw.com/archives/2014/02/suing-for-settling.php#more.

Hester Peirce, Striving for Justice, PointofLaw.com (Feb. 4, 2014), http://www.pointoflaw.com/archives/2014/02/striving-for-justice.php.

Hester Peirce, AIG, Government Rescues, and Billion Dollar Copiers, PointofLaw.com (Feb. 1, 2014), http://www.pointoflaw.com/archives/2014/02/aig-government-rescues-and-billion-dollar-copiers.php.

Hester Peirce, The Federal Reserve's 'Too-Big-to-Fail' Paternalism, Real Clear Markets (Jan. 29, 2014), http://www.realclearmarkets.com/articles/2014/01/29/the_federal_reserves_too-big-to-fail_paternalism_100866.html.

Hester Peirce, Dodd-Frank's Central Risk-Takers, PointofLaw.com (Jan. 24, 2014), http://www.pointoflaw.com/archives/2014/01/dodd-franks-central-risk-takers.php#more.

Hester Peirce, Pro-Consumer Banking 'Fixes' That Are Anti-Consumer, Real Clear Markets (Jan. 15, 2014), http://www.realclearmarkets.com/articles/2014/01/15/pro-consumer_banking_fixes_that_are_anti-consumer_100841.html.

Hester Peirce, Regulatory Budget Battles, PointofLaw.com (Jan. 14, 2014), http://www.pointoflaw.com/archives/2014/01/regulatory-budget-battles.php.

Hester Peirce, JPMorgan, Madoff, and Bureaucracy, PointofLaw.com (Jan. 10, 2014), http://www.pointoflaw.com/archives/2014/01/jpmorgan-madoff-and-bureaucracy.php#more.

Hester Peirce, In 2013, Dodd-Frank's Limits Began to Emerge, Real Clear Markets (Jan. 2, 2014), http://www.realclearmarkets.com/articles/2014/01/02/in_2013_dodd-franks_limits_began_to_emerge_100826.html.

Hester Peirce, CFPB and Disparate Impact, PointofLaw.com (Dec. 31, 2013), http://www.pointoflaw.com/archives/2013/12/cfpb-and-disparate-impact.php.

Hester Peirce, Financial Crisis Lessons for Prosecutors, PointofLaw.com (Dec. 26, 2013), http://www.pointoflaw.com/archives/2013/12/rethinking-prosecution-after-the-financial-crisis.php#more.

Vern McKinley and Hester Peirce, President Obama Faces a Bigger Ticking Time Bomb Than Obamacare Itself, Forbes (Dec.19, 2013), http://www.forbes.com/sites/realspin/2013/12/19/president-obama-faces-a-bigger-ticking-time-bomb-than-obamacare-itself/.

Hester Peirce, Bureau of Consumer Financial Protection as State AG, PointofLaw.com (Dec. 19, 2013), http://www.pointoflaw.com/archives/2013/12/bureau-of-consumer-financial-protection-as-state-ag.php.

Hester Peirce, What You Missed Amid the Volcker Rule's Finalization, Real Clear Markets (Dec. 18, 2013), http://www.realclearmarkets.com/articles/2013/12/18/what_you_missed_amid_volcker_rules_finalization_100802.html.

Hester Peirce, Is Volcker the New FCPA?, PointofLaw.com (Dec. 14, 2013), http://www.pointoflaw.com/archives/2013/12/is-volcker-the-new-fcpa.php#more.

Hester Peirce, Volcker Rule Is Nothing to Celebrate and Financial Markets Could Suffer, City A.M. (Dec. 12, 2013).

Hester Peirce, The Volcker Rule Isn't the Best Way to Prevent Risky Bank Trading, US News and World Report (Dec. 9, 2013), http://www.usnews.com/opinion/blogs/economic-intelligence/2013/12/09/the-volcker-rule-isnt-the-best-way-to-prevent-risky-bank-trading.

Hester Peirce, Regulatory Conceit Is Strangling Tomorrow's Start-Ups, Real Clear Markets (Dec. 4, 2013), http://www.realclearmarkets.com/articles/2013/12/04/regulatory_conceit_is_strangling_tomorrows_start-ups_100775.html.

Hester Peirce, CFTC's Latest Invitation to Court, PointofLaw.com (Dec. 4, 2013), http://www.pointoflaw.com/archives/2013/12/cftc-gets-another-invitation-to-court.php.

Hester Peirce, The Fed Is Biting Off More Than It Can Chew, US News and World Report (Dec. 2, 2013), http://www.usnews.com/opinion/blogs/economic-intelligence/2013/12/02/janet-yellen-should-try-to-reduce-the-federal-reserves-responsibilities.

Hester Peirce, 100 Days at the SEC, PointofLaw.com (Nov. 29, 2013), http://www.pointoflaw.com/archives/2013/11/100-days-at-the-sec.php#more.

Hester Peirce, JPMorgan's Unsettling Settlement, PointofLaw.com (Nov. 21, 2013), http://www.pointoflaw.com/archives/2013/11/jpmorgans-unsettling-settlement.php.

Hester Peirce, Yet Another Government Agency Is Keeping Tabs on You, Real Clear Markets (Nov. 20, 2013), http://www.realclearmarkets.com/articles/2013/11/20/yet_another_government_agency_is_keeping_tabs_on_you_100747.html.

Hester Peirce, Banking on Wind, PointofLaw.com (Nov. 13, 2013), http://www.pointoflaw.com/archives/2013/11/banking-on-wind.php.

Hester Peirce, SAC Capital's Offense, PointofLaw.com (Nov. 8, 2013), http://www.pointoflaw.com/archives/2013/11/sac-capitals-offense.php.

Hester Peirce, A Smaller Budget Would Make the CFTC More Effective, Real Clear Markets (Nov. 6, 2013), http://www.realclearmarkets.com/articles/2013/11/06/a_smaller_budget_would_make_the_cftc_more_effective_100712.html.

Hester Peirce, Dodd-Frank and Diversity, PointofLaw.com (Oct. 29, 2013), http://www.pointoflaw.com/archives/2013/10/dodd-frank.php.

Hester Peirce, The Wisdom of the Crowd, US News and World Report (Oct. 28, 2013), http://www.usnews.com/opinion/blogs/economic-intelligence/2013/10/28/sec-eyes-online-crowdfunding-regulations.

Hester Peirce, Is the PCAOB Turning Back Towards AS2, PointofLaw.com (Oct. 25, 2013), http://www.pointoflaw.com/archives/2013/10/is-the-pcaob-turning-back-towards-as2.php.

Hester Peirce, Let the Fed Centrally Plan Money Management?, Real Clear Markets (Oct. 23, 2013), http://www.realclearmarkets.com/articles/2013/10/23/let_the_fed_centrally_plan_money_management_100682.html.

Hester Peirce, SEC Chairman Speaks Again, PointofLaw.com (Oct. 18, 2013), http://www.pointoflaw.com/archives/2013/10/sec-chairman-speaks-again.php.

Hester Peirce, SEC Chairman Speaks, PointofLaw.com (Oct. 10, 2013), http://www.pointoflaw.com/archives/2013/10/sec-chairman-speaks.php#more.

Hester Peirce, New CFTC Proposal Could Harm Markets, Main Street (Oct. 10, 2013), http://mercatus.org/expert_commentary/new-cftc-proposal-could-harm-markets-main-street.

Hester Peirce, So You Want to Replace Gary Gensler at the CFTC, Real Clear Markets (Oct. 9, 2013), http://www.realclearmarkets.com/articles/2013/10/23/let_the_fed_centrally_plan_money_management_100682.html.

Hester Peirce, Don't Distort the Market Further, New York Times Room for Debate (Oct. 1, 2013).

Hester Peirce and Robert Greene, 'Money for Nothing,' But Not for Free, US News and World Report (Sept. 30, 2013), http://www.usnews.com/opinion/blogs/economic-intelligence/2013/09/30/money-for-nothing-documentary-shows-the-federal-reserves-flaws.

Hester Peirce, FINRA & MSRB Embrace Economics, PointofLaw.com (Sept. 30, 2013), http://www.pointoflaw.com/archives/2013/09/finra-msrb-embrace-economics.php.

Hester Peirce, Stockpiling Penalties, PointofLaw.com (Sept. 26, 2013), http://www.pointoflaw.com/archives/2013/09/stockpiling-penalties.php.

Hester Peirce, The FSOC's Latest Careless Too Big to Fail Decision, Real Clear Markets (Sept. 25, 2013), http://www.realclearmarkets.com/articles/2013/09/25/the_fsocs_latest_careless_too_big_to_fail_decision_100632.html.

Hester Peirce, SEC Steps Further Away from Its Mission, PointofLaw.com (Sept. 18, 2013), http://www.pointoflaw.com/archives/2013/09/sec-steps-further-away-from-its-mission.php#more.

Hester Peirce, Treasury's Coloring Book, PointofLaw.com (Sept. 14, 2013), http://www.pointoflaw.com/archives/2013/09/treasurys-coloring-book.php#more.

Hester Peirce, Bernanke's Successor Will Have More than Monetary Policy to Worry About, City A.M. (Sept. 13, 2013).

Hester Peirce, The FDIC Doesn't Want to Be the World's Insurer, PointofLaw.com (Sept. 12, 2013), http://www.pointoflaw.com/archives/2013/09/the-fdic-doesnt-want-to-be-the-worlds-insurer.php#more.

Hester Peirce, 2008's Regulatory 'Solutions' May Author the Next Crisis, Real Clear Markets (Sept. 11, 2013), http://www.realclearmarkets.com/articles/2013/09/11/2008s_regulatory_solutions_may_author_the_next_crisis_100609.html.

Hester Peirce, Regulators Made Questionable Call on QRM Rule, American Banker (Aug. 30, 2013).

Hester Peirce, It's Time to Ask if Dodd-Frank Will Help, or Hinder, Real Clear Markets (Aug. 28, 2013), http://www.realclearmarkets.com/articles/2013/08/28/its_time_to_ask_if_dodd-frank_will_be_a_help_or_a_hinder_100580.html.

Hester Peirce, Regulatory Complicity in Nasdaq's Troubles, PointofLaw.com (Aug. 27, 2013), http://www.pointoflaw.com/archives/2013/08/regulatory-complicity-in-nasdaqs-trouble.php#more.

Hester Peirce, CFTC's Distaste for the Administrative Procedure Act, PointofLaw.com (Aug. 22, 2013), http://www.pointoflaw.com/archives/2013/08/cftcs-distaste-for-the-administrative-procedure-act.php#more.

Hester Peirce, You Don't Need Uncle Sam to Purchase a House, Real Clear Markets (Aug. 14, 2013), http://www.realclearmarkets.com/articles/2013/08/14/you_dont_need_uncle_sam_to_purchase_a_house_100544.html.

Hester Peirce, Letting the CFTC Staff Run the Show, PointofLaw.com (Aug. 14, 2013), http://www.pointoflaw.com/archives/2013/08/letting-the-cftc-staff-run-the-show.php.

Hester Peirce, We're All Fabulous, Fab, PointofLaw.com (Aug. 5, 2013), http://www.pointoflaw.com/archives/2013/08/were-all-fabulous-fab.php#more.

Hester Peirce, Unaccountable CFPB Avoids Scrutiny, PointofLaw.com (Aug. 2, 2013), http://www.pointoflaw.com/archives/2013/08/unaccountable-cfpb-avoids-court-scrutiny.php#more.

Hester Peirce, Court Demands Durbin Rewrite, PointofLaw.com (Aug. 1, 2013), http://www.pointoflaw.com/archives/2013/08/court-demands-durbin-rewrite.php#more.

Hester Peirce, Building the Perfect Fed Chairman, Real Clear Markets (July 31, 2013), http://www.realclearmarkets.com/articles/2013/07/31/building_the_perfect_fed_chairman_100514.html.

Hester Peirce, The Government Has Your Data at Its Fingertips, The Hill (July 25, 2013), http://thehill.com/blogs/congress-blog/the-administration/313245-the-government-has-your-data-at-its-fingertips-.

Hester Peirce, SEC Wins Its Latest Conflict, PointofLaw.com (July 24, 2013), http://www.pointoflaw.com/archives/2013/07/sec-wins-its-latest-conflict.php#more.

Hester Peirce, The SEC, Information Leaks, and Policy Tweaks, PointofLaw.com (July 23, 2014), http://www.pointoflaw.com/archives/2013/07/the-sec-information-leaks-and-policy-tweaks.php.

Hester Peirce, Dodd-Frank at Three: Time to Reform the Financial Reform Act, The Guardian (July 21, 2013), http://www.theguardian.com/commentisfree/2013/jul/21/dodd-frank-financial-reform.

Hester Peirce, With Joblessness High, SEC Must Get Out of the Way of JOBS, Real Clear Markets (July 17, 2013), http://www.realclearmarkets.com/articles/2013/07/17/with_joblessness_high_sec_must_get_out_of_the_way_of_jobs__100483.html.

Hester Peirce, King Richard, PointofLaw.com (July 16, 2013), http://www.pointoflaw.com/archives/2013/07/king-richard.php.

Hester Peirce, Recklessly Jailing Bankers, PointofLaw.com (July 10, 2013), http://www.pointoflaw.com/archives/2013/07/recklessly-jailing-bankers.php.

Hester Peirce, The Fed's Unhealthy Influence, US News and World Report (July 8, 2013), http://www.usnews.com/opinion/blogs/economic-intelligence/2013/07/08/how-the-fed-screws-up-banks-and-capital.

Hester Peirce, Independence Day? Not for the Derivatives' Market, Real Clear Markets (July 3, 2013), http://www.realclearmarkets.com/articles/2013/07/03/independence_day_not_for_the_derivatives_market_100448.html.

Hester Peirce, FINRA's Profits Should Come With a Price, PointofLaw.com (July 2, 2013), http://www.pointoflaw.com/archives/2013/07/finras-profits-should-come-with-a-price.php#more.

Hester Peirce, CFTC Regulation Clears Court's Low Bar, PointofLaw.com (June 26, 2013), http://www.pointoflaw.com/archives/2013/06/cftc-regulation-clears-courts-low-bar.php#more.

Hester Peirce, With Bank Failures, the FDIC Is the Problem, Real Clear Markets (June 19, 2013), http://www.realclearmarkets.com/articles/2013/06/19/with_bank_failures_the_fdic_is_the_problem_100410.html.

Hester Peirce, Would Be Whistleblowers, PointofLaw.com (June 18, 2013), http://www.pointoflaw.com/archives/2013/06/would-be-whistleblowers.php.

Hester Peirce, Is the CFTC's Latest Win a Victory, PointofLaw.com (June 13, 2013), http://www.pointoflaw.com/archives/2013/06/is-the-cftcs-latest-win-a-victory.php#more.

Hester Peirce, SEC Settles On Poor Cases, PointofLaw.com (June 6, 2013), http://www.pointoflaw.com/archives/2013/06/sec-settles-on-poor-cases.php#more.

Hester Peirce, An Ugly Future of 'Systemically Important' Institutions, Real Clear Markets (June 5, 2013), http://www.realclearmarkets.com/articles/2013/06/05/an_ugly_future_of_systemically_important_institutions_100375.html.

Hester Peirce, Irregularities at Regulated Exchanges, PointofLaw.com (May 31, 2013), http://www.pointoflaw.com/archives/2013/05/irregularities-at-regulated-exchanges.php#more.

Hester Peirce, Lessons for the CFTC from MF Global, PointofLaw.com (May 24, 2013), http://www.pointoflaw.com/archives/2013/05/lessons-for-the-cftc-from-its-oversight-of-mf-global.php#more.

Hester Peirce, The IRS Bothers You, So Should the FSOC and CFPB, Real Clear Markets (May 22, 2013), http://www.realclearmarkets.com/articles/2013/05/22/if_the_irs_bothers_you_so_should_the_fsoc_and_cfpb_100336.html.

Hester Peirce, Speculating on Bitcoin, PointofLaw.com (May 13, 2013), http://www.pointoflaw.com/archives/2013/05/speculating-on-bitcoin.php#more.

Hester Peirce, The Future of Dodd-Frank's New Swap Execution Facilities, PointofLaw.com (May 11, 2013), http://www.pointoflaw.com/archives/2013/05/the-future-of-dodd-franks-new-swap-execution-facilities.php.

Hester Peirce, The SEC's Cross-Border Regulatory Creep, Real Clear Markets (May 8, 2013), http://www.realclearmarkets.com/articles/2013/05/08/the_secs_cross_border_regulation_creep_100305.html.

Hester Peirce, Data Repository Rage, PointofLaw.com (May 3, 2013), http://www.pointoflaw.com/archives/2013/05/data-repository-rage.php#more.

Hester Peirce, Bank Regulators Never 'Encourage,' They Require, Real Clear Markets (Apr. 24, 2013), http://www.realclearmarkets.com/articles/2013/04/24/bank_regulators_never_encourage_they_require_100280.html.

Hester Peirce, The Undirected CFPB, PointofLaw.com (Apr. 24, 2013), http://www.pointoflaw.com/archives/2013/04/the-undirected-cfpb.php#more.

Hester Peirce, The CFPB Must Be More Transparent, US News and World Report (Apr. 23, 2014), http://www.usnews.com/opinion/blogs/economic-intelligence/2013/04/22/bureau-of-consumer-financial-protection-must-be-held-accountable.

Hester Peirce, Derivatives Diplomacy, PointofLaw.com (Apr. 19, 2013), http://www.pointoflaw.com/archives/2013/04/derivatives-diplomacy.php.

Hester Peirce, Government Data Gaffes, PointofLaw.com (Apr. 11, 2013), http://www.pointoflaw.com/archives/2013/04/the-governments-fat-fingers.php.

Hester Peirce, President Obama Trumpets 'Financial Capability' While Undermining It, Real Clear Markets (Apr. 10, 2013), http://www.realclearmarkets.com/articles/2013/04/10/president_obama_trumpets_financial_capability_while_undermining_it_100253.html.

Hester Peirce, When Having 200,000 Friends Is Not Enough, PointofLaw.com (Apr. 3, 2013), http://www.pointoflaw.com/archives/2013/04/when-having-200000-friends-is-not-enough.php.

Hester Peirce, The CFPB's Misleading Complaint Database, PointofLaw.com (Mar. 28, 2013), http://www.pointoflaw.com/archives/2013/03/the-cfpbs-misleading-complaint-database.php.

Hester Peirce, The CFPB Has a Partial Epiphany, Real Clear Markets (Mar. 27, 2013), http://www.realclearmarkets.com/articles/2013/03/27/the_cfpb_has_a_partial_epiphany_100225.html.

Hester Peirce, SEC's Resource Misallocation, PointofLaw.com (Mar. 20, 2013), http://www.pointoflaw.com/archives/2013/03/secs-resource-misallocation.php.

Hester Peirce, The Need for Economic Analysis in Financial Regulation, PointofLaw.com (Mar. 14, 2013), http://www.pointoflaw.com/archives/2013/03/the-need-for-economic-analysis-in-financial-regulation.php#more.

Hester Peirce, Dodd-Frank: 'Financial Stability' on the Backs of Taxpayers, Real Clear Markets (Mar. 13, 2013), http://www.realclearmarkets.com/articles/2013/03/13/dodd-frank_financial_stability_on_the_backs_of_taxpayers_100198.html.

Hester Peirce, For Real Reform, We Must Move Past 'Too Big to Jail' Hype, US News and World Report Debate Club (Mar. 8, 2013), http://www.usnews.com/debate-club/are-banks-becoming-too-big-to-jail/for-real-reform-we-must-move-past-too-big-to-jail-hype.

Hester Peirce, Gabelli v. SEC, PointofLaw.com (Mar. 8, 2013), http://www.pointoflaw.com/archives/2013/03/gabelli-v-sec.php.

Hester Peirce, No Need to Rush New Money-Market Fund Regulations, Wall Street Journal Letter to the Editor (Feb. 28, 2013).

Hester Peirce, Volcker Rule Continues to Trouble Regulators and Industry (Feb. 28, 2013), http://mercatus.org/expert_commentary/volcker-rule-continues-trouble-regulators-and-industry.

Hester Peirce, The Fed Shouldn't Regulate What It Doesn't Understand, Real Clear Markets (Feb. 27, 2013), http://www.realclearmarkets.com/articles/2013/02/27/the_fed_shouldnt_regulate_what_it_doesnt_understand_100166.html.

Hester Peirce, Should the FSOC Be Renamend the FSEC, PointofLaw.com (Feb. 26, 2013), http://www.pointoflaw.com/archives/2013/02/should-the-fsoc-be-renamed-the-fsec.php#more.

Hester Peirce, Senator Warren's Inconsistent Approach to Regulatory Accountability, PointofLaw.com (Feb. 22, 2013), http://www.pointoflaw.com/archives/2013/02/senator-warrens-inconsistent-approach-to-regulatory-accountability.php.

Hester Peirce, What the Senate Should Ask Jack Lew, Real Clear Markets (Feb. 13, 2013), http://www.realclearmarkets.com/articles/2013/02/13/what_the_senate_should_ask_jack_lew_100146.html.

Hester Peirce, Dodd-Frank, Lew, and Too Big to Fail, PointofLaw.com (Feb. 13, 2013), http://www.pointoflaw.com/archives/2013/02/dodd-frank-and-too-big-to-fail.php.

Hester Peirce, Fixing LIBOR from Afar, PointofLaw.com (Feb. 8, 2013), http://www.pointoflaw.com/archives/2013/02/fixing-libor-from-afar.php.

Hester Peirce, Obama's Nominations Signal Regulation by Enforcement, Real Clear Markets (Jan. 31, 2013), http://www.realclearmarkets.com/articles/2013/01/30/obamas_nominations_signal_regulation_by_enforcement_100119.html.

Hester Peirce, Government-Sanctioned Credit Ratings, PointofLaw.com (Jan. 30, 2013), http://www.pointoflaw.com/archives/2013/01/government-sanctioned-credit-ratings.php#more.

Hester Peirce, Today's NLRB Ruling Casts a Shadow Over the CFPB, PointofLaw.com (Jan. 25, 2013), http://www.pointoflaw.com/archives/2013/01/todays-nlrb-decision-casts-a-shadow-over-the-cfpb.php.

Hester Peirce, Why Dodd-Frank Is Pushing the US Toward Impending Financial Crisis, City AM (Jan. 23, 2013).

Hester Peirce and Robert Greene, A New Year for Unaccountable Regulators, Real Clear Markets (Jan. 17, 2013), http://www.realclearmarkets.com/articles/2013/01/17/a_new_year_for_unaccountable_financial_regulators_100094.html.

Hester Peirce, Sovereign Fear, PointofLaw.com (Jan. 16, 2013), http://www.pointoflaw.com/archives/2013/01/sovereign-fear.php.

Hester Peirce, Dodd-Frank's 10 Biggest Omissions, Daily Caller (Jan. 9, 2013), http://dailycaller.com/2013/01/09/dodd-franks-10-biggest-omissions/.

Hester Peirce and James Broughel, Dodd-Frank Remains a Troubled Work in Progress, American Banker (Jan. 9, 2013).

Hester Peirce, AIG's Attitude of Gratitude, PointofLaw.com (Jan. 9, 2013), http://www.pointoflaw.com/archives/2013/01/aigs-attitude-of-gratitude.php#more.

Hester Peirce, Dodd-Frank Disappointments, PointofLaw.com (Jan. 8, 2013), http://www.pointoflaw.com/archives/2013/01/dodd-frank-disappointments.php.

Hester Peirce, 10 Ways Dodd-Frank Will Hurt the Economy in 2013, US News and World Report (Jan. 7, 2013), http://www.usnews.com/opinion/blogs/economic-intelligence/2013/01/07/10-ways-dodd-frank-will-hurt-the-economy-in-2013.

Hester Peirce, Dodd-Frank Regulatory Actions to Watch in 2013, Real Clear Policy (Jan. 3, 2013), http://www.realclearpolicy.com/articles/2013/01/03/dodd-frank_regulatory_actions_to_watch_in_2013_393.html.

Hester Peirce, More Sensible Regulations Require Predictable Disclosure, Real Clear Markets (Jan. 3, 2013), http://www.realclearmarkets.com/articles/2013/01/03/more_sensible_regulations_require_predictable_disclosure_100067.html.

Hester Peirce, Government's Entanglement with Credit Ratings, PointofLaw.com (Jan. 3, 2013), http://www.pointoflaw.com/archives/2013/01/governments-entanglement-with-credit-ratings.php.

Hester Peirce, Facebook's Disappointments, PointofLaw.com (Dec. 21, 2012), http://www.pointoflaw.com/archives/2012/12/facebook-disappointments.php.

Hester Peirce, The SEC's Budget Blues Are Something to Celebrate, Real Clear Markets (Dec. 19, 2012), http://www.realclearmarkets.com/articles/2012/12/19/the_secs_budget_blues_are_something_to_celebrate_100052.html.

Hester Peirce, The CFTC's Victorious Day in Court, PointofLaw.com (Dec. 14, 2012), http://www.pointoflaw.com/archives/2012/12/the-cftcs-victorious-day-in-court.php#more.

Hester Peirce, This Week's Dodd-Frank Implementation Hearings, PointofLaw.com (Dec. 11, 2012), http://www.pointoflaw.com/archives/2012/12/this-weeks-dodd-frank-implementation-hearings.php#more.

Hester Peirce, It's Time for the FDIC to Stop Playing 'TAG', Real Clear Markets (Dec. 5, 2012), http://www.realclearmarkets.com/articles/2012/12/05/its_time_for_the_fdic_to_stop_playing_tag_100023.html.

Hester Peirce, The Reluctant Regulator, PointofLaw.com (Dec. 3, 3012), http://www.pointoflaw.com/archives/2012/12/the-reluctant-regulator.php.

Hester Peirce, Chairman Schapiro's Troubled Tenure at the SEC, PointofLaw.com (Nov. 27, 2012), http://www.pointoflaw.com/archives/2012/11/chairman-schapiros-troubled-tenure-at-the-sec.php#more.

Hester Peirce, At Long Last, A Merger of the SEC and CFTC, Real Clear Markets (Nov. 26, 2012), http://www.realclearmarkets.com/articles/2012/11/21/at_long_last_a_merger_of_the_sec_and_cftc_100000.html.

Hester Peirce, Senator-Elect Warren's Quandary, PointofLaw.com (Nov. 25, 2012), http://www.pointoflaw.com/archives/2012/11/senator-elect-warrens-quandary.php.

Hester Peirce, Persistent Lack of Deliberation at the CFTC, PointofLaw.com (Nov. 20, 2012), http://www.pointoflaw.com/archives/2012/11/persistent-lack-of-deliberation-by-the-cftc.php.

Hester Peirce, Interpreting the Foreign Corrupt Practices Act, PointofLaw.com (Nov. 15, 2012), http://www.pointoflaw.com/archives/2012/11/interpreting-the-foreign-corrupt-practices-act.php.

Hester Peirce, The SEC Staff's Rubber Stamp, PointofLaw.com (Nov. 12, 2012), http://www.pointoflaw.com/archives/2012/11/the-sec-staffs-rubber-stamp.php.

Hester Peirce, The Latest CFTC Rulemaking Challenge, PointofLaw.com (Nov. 9, 2012), http://www.pointoflaw.com/archives/2012/11/the-latest-cftc-rulemaking-challenge.php.

Hester Peirce, CFTC's Aggressive Extraterritorial Reach, PointofLaw.com (Nov. 8, 2012), http://www.pointoflaw.com/archives/2012/11/cftcs-aggressive-extraterritorial-reach.php.

Hester Peirce, Forget Elections, We Suffer an Anonymous Governing Class, Real Clear Markets (Nov. 7, 2012), http://www.realclearmarkets.com/articles/2012/11/07/forget_elections_we_suffer_an_anonymous_governing_class_99975.html.

Hester Peirce, Regulators Must Think Before They Regulate, Real Clear Markets (Oct. 24, 2012), http://www.realclearmarkets.com/articles/2012/10/24/regulators_must_think_before_they_regulate_99950.html.

Hester Peirce, In the Post Dodd-Frank Derivatives World, October 12th Matters, Real Clear Markets (Oct. 10, 2012), http://www.realclearmarkets.com/articles/2012/10/10/in_the_post_dodd-frank_derivatives_world_october_12th_matters_99927.html.

Hester Peirce, Blowing the Whistle on Whistleblowers, Real Clear Markets (Sept. 26, 2012), http://www.realclearmarkets.com/articles/2012/09/26/blowing_the_whistle_on_whistleblowers_99902.html.

Hester Peirce and Robert Greene, Money Market Maneuvering (Sept. 19, 2012), http://mercatus.org/expert_commentary/money-market-maneuvering.

Hester Peirce, The Consumer Financial Protection Bureau's Overinflated Self-Image, Real Clear Markets (Sept. 13, 2012), http://www.realclearmarkets.com/articles/2012/09/13/the_consumer_protection_financial_bureaus_overinflated_self-image_99875.html.

Hester Peirce, The New York Fed's False Assertion of AIG Bailout Profits, Real Clear Markets (Aug. 29, 2012),
http://www.realclearmarkets.com/articles/2012/08/29/the_new_york_feds_hat_tip_to_joe_cassano_99848.html.

Hester Peirce, Exporting Regulation (Aug. 29, 2012), http://mercatus.org/expert_commentary/exporting-regulation.

Hester Peirce, No Evidence that Standard Chartered Is Guilty As Charged, Real Clear Markets (Aug. 15, 2012), http://www.realclearmarkets.com/articles/2012/08/15/no_evidence_that_standard_chartered_is_guilty_as_charged_99825.html.

Hester Peirce, Tim Geithner, LIBOR Manipulations, and the Bailout of AIG, Real Clear Markets (Aug. 2, 2012),
http://www.realclearmarkets.com/articles/2012/08/02/tim_geithner_libor_manipulations_and_the_bailout_of_aig_99796.html.

Hester Peirce, Nationalize the Banks?, New York Times Letter to the Editor (July 31, 2012).

Hester Peirce and James Broughel, Dodd-Frank: Two Years Later, Countless Questions Remain (July 21, 2012), http://mercatus.org/expert_commentary/dodd-frank-two-years-later-countless-questions-remain.

Hester Peirce, The SEC's Mild-Mannered, but Tough CAT, Real Clear Markets (July 20, 2012), http://www.realclearmarkets.com/articles/2012/07/20/the_secs_mild-mannered_but_tough_cat_99777.html.

Hester Peirce, More Regulations and More Regulators May Not Be the Answer (July 18, 2012), http://mercatus.org/expert_commentary/more-regulations-and-more-regulators-may-not-be-answer.

Hester Peirce, Government Agency Turns Barclays Settlement Into a Power Grab, US News and World Report (July 3, 2012), http://www.usnews.com/opinion/blogs/economic-intelligence/2012/07/03/government-agency-turns-barclays-settlement-into-a-power-grab.

Hester Peirce, With Banks in Texas, Small is Beautiful, Real Clear Markets (June 27, 2012), http://www.realclearmarkets.com/articles/2012/06/27/with_banks_in_texas_small_is_beautiful__99737.html.

Hester Peirce, In Finance, Private Regulation vs. Government Regulation, Real Clear Markets (June 6, 2012), http://www.realclearmarkets.com/articles/2012/06/06/in_finance_private_regulation_vs_government_regulation_99705.html.

Hester Peirce, Accountability for the Self-Regulator (June 1, 2012), http://mercatus.org/expert_commentary/accountability-self-regulator.

Hester Peirce, Too Small to Survive (June 1, 2012), http://mercatus.org/expert_commentary/too-small-survive.

Hester Peirce, Not Liking Facebook (May 24, 2012), http://mercatus.org/expert_commentary/not-liking-facebook.

Hester Peirce, A Regulator Who Knows No Bounds (May 24, 2012), http://mercatus.org/expert_commentary/regulator-who-knows-no-bounds.

Hester Peirce, Double Liability A Better Response to J.P. Morgan Mess, US News and World Report (May 22, 2012), http://www.usnews.com/opinion/blogs/economic-intelligence/2012/05/22/double-liability-a-better-response-to-jp-morgan-mess.

Hester Peirce, JP Morgan's Beautiful Loss (May 11, 2012), http://mercatus.org/expert_commentary/jp-morgans-beautiful-loss.

Hester Peirce, Money Market Reform's High Stakes, Real Clear Markets (May 8, 2012), http://www.realclearmarkets.com/articles/2012/05/08/money_market_reforms_high_stakes_99659.html.

Hester Peirce, Shutting Down the TARP Party (Apr. 27, 2012), http://mercatus.org/expert_commentary/shutting-down-tarp-party-0.

Hester Peirce, The CFTC's Regulatory Ambition (Apr. 25, 2012), http://mercatus.org/expert_commentary/cftc-s-regulatory-ambition.

Hester Peirce, Dodd-Frank's Office of Financial Research Is an Affront to Privacy, Real Clear Markets (Apr. 19, 2012), http://www.realclearmarkets.com/articles/2012/04/19/dodd-franks_office_of_financial_research_is_an_affront_to_privacy_99624.html.

Hester Peirce, Citigroup Pay Nay (Apr. 19, 2012), http://mercatus.org/expert_commentary/citigroup-pay-nay.

Hester Peirce, TARP Success Trap (Apr. 18, 2012), http://mercatus.org/expert_commentary/tarp-success-trap.

Hester Peirce, The CFTC and Political Reality (Apr. 4, 2012), http://mercatus.org/expert_commentary/cftc-and-political-reality.

Hester Peirce, STOCK and JOBS Only Treat Symptoms (Apr. 4, 2012), http://mercatus.org/expert_commentary/stock-and-jobs-only-treat-symptoms.

Hester Peirce, The SEC's Money Problems (Apr. 3, 2012), http://mercatus.org/expert_commentary/secs-money-problems.

David M. Primo and Hester Peirce, To Stop Insider Trading in D.C., Shrink Government, The Hill (Mar. 28, 2012), http://thehill.com/blogs/congress-blog/economy-a-budget/218877-to-stop-insider-trading-in-dc-shrink-government.

Hester Peirce, CFPB Knows Abuse When It Sees It (Mar. 29, 2012), http://mercatus.org/expert_commentary/cfpb-knows-abuse-when-it-sees-it.

Hester Peirce, Goldman Customer Service versus MF Global Customer Service (Mar. 27, 2012), http://mercatus.org/expert_commentary/goldman-customer-service-versus-mf-global-customer-service.

Hester Peirce, The SEC Must Get On Board with Entrepreneurs, Real Clear Markets (Mar. 26, 2012), http://www.realclearmarkets.com/articles/2012/03/26/the_sec_must_get_on_board_with_entrepreneurs_99583.html.

Hester Peirce, The Real Cost of the 2008 Bailouts, US News and World Report (Mar. 14, 2012), http://www.usnews.com/opinion/blogs/economic-intelligence/2012/03/14/the-real-cost-of-the-2008-bailouts.

Hester Peirce, TARP Hangers-On (Mar. 9, 2012), http://mercatus.org/expert_commentary/tarp-hangers.

Hester Peirce, National Consumer Protection Week (Mar. 8, 2012), http://mercatus.org/expert_commentary/national-consumer-protection-week.

Hester Peirce, Geithner's Own Forgetfulness (Mar. 2, 2012), http://mercatus.org/expert_commentary/geithner-s-own-forgetfulness.

Hester Peirce, Celebrating the Oscars, The Hill (Feb. 27, 2012), http://thehill.com/blogs/congress-blog/politics/212789-hester-peirce-senior-research-fellow-mercatus-center.

Hester Peirce, Hijacking SEC Disclosure (Feb. 22, 2012), http://mercatus.org/expert_commentary/hijacking-sec-disclosure.

Hester Peirce, The Unacceptably Reserved Federal Reserve (Feb. 21, 2012), http://mercatus.org/expert_commentary/unacceptably-reserved-federal-reserve.

Hester Peirce, Budget Increases Should Require Accountability (Feb. 14, 2012), http://mercatus.org/expert_commentary/budget-increases-should-require-accountability.

Hester Peirce, TARP Takes Another Misstep (Feb. 14, 2012), http://mercatus.org/expert_commentary/tarp-takes-another-misstep.

Hester Peirce, Declaring Financial System Safe Requires Serious Assumptions (Feb. 13 2012), http://mercatus.org/expert_commentary/declaring-financial-system-safe-requires-serious-assumptions.

Hester Peirce, The Flip Side of the Insider Trading Ban (Feb. 1, 2012), http://mercatus.org/expert_commentary/flip-side-insider-trading-ban.

Hester Peirce, Setting Ourselves Up for Another Crisis (Jan. 31, 2012), http://mercatus.org/expert_commentary/setting-ourselves-another-crisis-0.

Hester Peirce, GM's Success and the Taxpayers' Tab (Jan. 26, 2012), http://mercatus.org/expert_commentary/gm-s-success-and-taxpayers-tab.

Hester Peirce, Halted SEC Rule Good News for Investors (Jan. 25, 2012), http://mercatus.org/expert_commentary/halted-sec-rule-good-news-investors.

PREPARED STATEMENT OF ROBERT J. JACKSON, JR.

To Be a Member of the Securities and Exchange Commission

October 24, 2017

Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you very much for the opportunity to join you today. It is my honor to be testifying before you regarding my nomination to be a Commissioner of the Securities and Exchange Commission.

For me, there is no greater privilege or responsibility than upholding the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate access to capital. To understand why that's so important to me, I thought it might be helpful for me to start by sharing a bit about myself and my family. I was born in the Bronx, New York, to my two wonderful parents, Maureen and Robert Jackson, and I feel so fortunate that they are here with me today. My mother was one of nine children; my father was one of five. No one, least of all my parents, would have even dreamed that one day they might be sitting behind their son on an occasion like this.

You see, the day I was born, my father was working as an accounting clerk at a small encyclopedia company called Funk and Wagnalls. Throughout my childhood, my mother held several part-time jobs, including the early shift at Dunkin' Donuts, just to help make ends meet.

They were young, overworked and sometimes overwhelmed. But they believed that if they worked hard and saved what they could, their son might someday go to college.

So every month my parents plowed their hard-earned paychecks into the market, knowing that if their investments were protected and growing they would one day be able to afford to send me to school. That's really the only reason why I had the chance to go to college—and the incredible opportunity to be here today with you.

I believe that the SEC's purpose is to protect everyday investors like my Mom and Dad. Because today's markets are so complex, it can be easy to get lost in technical details and forget why those safeguards are so important. But my story shows why protecting America's investors is at the heart of what the SEC does. Safe markets not only encourage investment and entrepreneurship and growth. Safe markets make it possible for two young middle-class parents to transform their lives—so that someday their son has the chance to sit before the United States Senate as a Presidential nominee. Safe markets are at the core of the American dream—something I have learned by living it.

That's why my work—in Government, as a teacher, and as a researcher—has focused on everyday investors' confidence in our markets. At the Treasury Department during the financial crisis, I was proud to help develop rules that tie top managers' pay more closely to performance and give investors a voice on executive compensation. When my research team at Columbia Law School showed that the SEC's systems were inadvertently giving high-speed traders market-moving information before the public could see it on the SEC's website, I worked with this Committee's Staff to help make sure the SEC gave investors the level playing field they deserve. And when our team helped convince regulators to release additional information about stockbroker fraud, we were proud to help others use the data to expose the brokers most likely to defraud investors.

If I have the honor of being confirmed, I intend to bring those tools to bear on the SEC's crucial task. I will be a strong advocate for exploring how new technologies can make corporate disclosures more reliable and enforcement efforts more effective and efficient. I will encourage the Staff and my fellow Commissioners to draw on the SEC's long history of favoring transparency as a means of maintaining investor confidence in our markets. And I will work to implement the corporate-governance protections that Congress has enshrined into law—so that investors, employees, and communities can be sure that our companies are working to produce the kind of long-term value creation that has been the hallmark of the American economy for generations.

As I mentioned, the SEC's three-part statutory mandate requires the agency to protect investors, maintain fair and efficient markets, and facilitate capital formation. I believe in all three of these noble goals, and in the thousands of SEC Staff across the Nation who work every day to achieve them. Whether protecting retirees from stockbroker fraud, making sure Americans get a fair price when they purchase shares of stock, or uniting an entrepreneur with the funding he or she needs to spur a life-changing invention, the daily, meat-and-potatoes work of the Commission and its Staff is crucial to the functioning of our economy. If confirmed, it would be my privilege to be a part of those efforts.

But I also believe it is important to remember why that work is so important. For me, that reason will always be my family's story. You see, my parents' confidence in our markets not only changed my life—it changed their lives, too. My father, the encyclopedia company clerk, retired as the Chief Accounting Officer of a public company. My mother left Dunkin' Donuts, earned her teaching degree, and has been teaching elementary school for nearly 30 years. None of that would have been possible if my parents hadn't felt they could safely save for their futures—and mine—in our markets. If I'm confirmed, you should know that helping to make stories like theirs possible is what will motivate me every day. That's truly what makes the SEC so important—and it's why I'm so honored to be here.

Thank you again for the opportunity to appear before you today. I would be delighted to answer any questions you might have.

Jackson, Jr., Robert Joseph

ROBERT J. JACKSON, JR.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Jackson, Jr., Robert Joseph.

Position to which nominated: Member, Securities and Exchange Commission.

Date of Nomination: September 5, 2017.

Date of Birth: February 14, 1977.

Place of Birth: Bronx, New York.

Marital Status: I am not married.

Name and Ages of Children: I do not have any children.

Education:

Institution	Dates Attended	Degrees Received	Dates of Degrees
University of Pennsylvania	September 1995 to December 1999	Bachelor of Arts in Politics, Philosophy, and Economics	December 1999
University of Pennsylvania's Wharton School of Business	September 1995 to December 1999	Bachelor of Science in Economics with a Concentration in Finance	December 1999
University of Pennsylvania's Wharton School of Business	September 1998 to May 2000	Master of Business Administration with a Concentration in Finance	May 2000
Harvard Kennedy School	September 2002 to May 2005	Master of Public Policy	May 2005
Harvard Law School	September 2001 to May 2005	Juris Doctor	May 2005

Honors and Awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

In 2014, Columbia Law School appointed me to serve on the Dean's Search Committee and the Lateral Appointments Committee.

In 2013, the Harvard Law School Program in Corporate Governance appointed me a Senior Fellow of the Program.

Jackson, Jr., Robert Joseph

Honors and Awards:

In 2012, Columbia Law School's students honored me with the Willis L.M. Reese Prize for Excellence in Teaching.

In 2010, Treasury Secretary Timothy Geithner awarded me the Department of the Treasury's Distinguished Service Award.

In 2009, in light of my service at the Treasury Department following the financial crisis, Assistant Treasury Secretary for Financial Stability Timothy Massad honored me with the Department of the Treasury's Exceptional Service Award.

In 2006, Harvard Law School and the Olin Foundation appointed me a Terence M. Considine Research Fellow in Law and Economics.

In 2005, Harvard's Kennedy School awarded me the Taubman Prize for my thesis in connection with my Master of Public Policy degree.

In 2005, Harvard Law School awarded my Juris Doctor *cum laude.*

From 2002 to 2003, Harvard's Kennedy School appointed me a Teaching Fellow in its *Markets and Market Failure* and *Public Finance* courses.

In 1999, the Undergraduate Division of the Wharton School of Business awarded my Bachelor of Science in Economics degree, with a concentration in finance, *summa cum laude*.

In 1999, the University of Pennsylvania awarded my Bachelor of Arts degree, with a concentration in Politics, Philosophy, and Economics, *summa cum laude*.

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Since March 2017, I have been a member of the Thirty Percent Coalition, a nonprofit organization committed to gender diversity in the corporate boardroom.

Since February 2016, I have been a member of the Board of Trustees of the *Columbia Law Review*.

Since July 2013, I have been a Senior Fellow at the Harvard Law School Program on Corporate Governance.

Since July 2010, I have been a member of the Board of Trustees of the *Columbia Business Law Review*.

Jackson, Jr., Robert Joseph

Memberships: From August 2003 to May 2005, I was an Editor of the *Harvard Law Review*, and was Articles Co-Chair from March 2004 to March 2005.

Employment Record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Professor of Law and Director, Program on Corporate Law and Policy, Columbia Law School (July 2010 to Present). Since July 2010, I have served as Professor of Law and Director of the Program on Corporate Law and Policy at Columbia Law School, located at 435 West 116th Street, New York, New York. My research and teaching focus on empirical study of corporate governance and finance.

Director, Advisory Board, RAND Corporation Center for Corporate Ethics and Governance (July 2010 to Present). Since July 2010, I have served as a Director on the Advisory Board of the RAND Corporation's Center for Corporate Ethics and Governance, which is located at 1776 Main Street, Santa Monica, California.

Member, Morningside Data Extraction Ventures, L.L.C. (July 2014 to Present). Since July 2014 I have served as a Member of this limited liability corporation, which licenses certain intellectual property I created while employed by Columbia University.

Member and President, RJJJR L.L.C. (July 2014 to Present). Since July 2014 I have served as sole Member and President of this firm, through which I conduct consulting work related to corporate law.

Attorney-Advisor, United States Department of the Treasury (March 2009 to July 2010). I previously served as an Attorney-Advisor at the United States Department of the Treasury, advising on matters relating to corporate governance at firms receiving federal assistance during the financial crisis. I also advised Kenneth Feinberg in his capacity as Special Master for TARP Executive Compensation.

Associate, Wachtell, Lipton, Rosen & Katz (December 2007 to March 2009). I was previously an Associate at the New York law firm Wachtell, Lipton, Rosen & Katz, which is located at 51 West 52nd Street, New York, New York. My work focused on corporate governance and executive compensation.

Postdoctoral Research Fellow, Harvard Law School (September 2006 to December 2007). I was a researcher at Harvard Law School, located at 1563 Massachusetts Avenue, Cambridge, Massachusetts, focusing on empirical study of the relationship between executive pay and performance. I also served as founding editor of the Harvard Law School Forum on Corporate Governance and Financial Regulation.

Employment Record:

Law Clerk, Judge Amalya Kearse, United States Court of Appeals for the Second Circuit (August 2005 to August 2006). I previously served as a Law Clerk at the United States Court of Appeals for the Second Circuit, located at 40 Foley Square, New York, New York. My responsibilities included advising the Judge regarding cases before the Court.

Summer Associate, Gibson, Dunn & Crutcher (May 2005 to August 2005). I was a Summer Associate at the Washington, D.C. offices of this firm, located at 1050 Connecticut Avenue NW, Number 900, Washington, D.C.

Law Intern, United States Department of Justice Counterterrorism Unit (September 2004 to May 2005). I previously served at the Department of Justice's Counterterrorism Unit, located at 950 Pennsylvania Avenue NW, Washington, D.C., 20530-0001, through a clinical program at Harvard Law School. I prepared memoranda and analysis on jury instructions used in the prosecution of terrorists.

Summer Associate, Wachtell, Lipton, Rosen & Katz (May 2004 to August 2004). I was a Summer Associate at this firm, which is located at 51 West 52nd Street, New York, New York. My work focused on corporate, transactional, and litigation matters.

Summer Associate, Cleary, Gottlieb, Steen & Hamilton (May 2003 to August 2003). I was a Summer Associate at the Brussels, Belgium and Washington, D.C. offices of this firm, focusing on antitrust matters. The Washington offices of this firm are located at 2000 Pennsylvania Avenue NW, Number 3, Washington, D.C.

Judicial Intern, Judge Robert D. Sack, United States Court of Appeals for the Second Circuit (May 2002 to August 2002). I served as a Judicial Intern at the United States Court of Appeals for the Second Circuit, which is located at 40 Foley Square, New York, New York. My responsibilities included advising the Judge and his Law Clerks regarding cases before the Court.

Associate, Mercer Management Consulting (June 2000 to August 2001). I was an Associate at this firm, which is now a subsidiary of Oliver Wyman, located at 1166 Sixth Avenue, New York, New York. My responsibilities included advising public companies regarding strategic and risk-related matters.

Judicial Intern, Office of the Administrative Assistant to the Chief Justice of the United States (January 2000 to May 2000). I served as an Intern in the office of James Duff, Administrative Assistant to Chief Justice William H. Rehnquist, at the Supreme Court of the United States, located at One First Street NE, Washington, D.C.

Employment Record: ***Associate, Bear, Stearns & Co. Inc. (May 1999 to December 1999).*** I was an Associate at this investment bank, which is now a subsidiary of J.P. Morgan Chase & Co. Inc., located at 270 Park Avenue, New York, New York. I advised companies on mergers and acquisitions, initial public offerings and high-yield debt financings.

Government Experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Attorney-Advisor, United States Department of the Treasury (March 2009 to July 2010). I previously served as an Attorney-Advisor at the United States Department of the Treasury, advising on matters relating to corporate governance at firms receiving federal assistance during the financial crisis. I also advised Kenneth Feinberg in his capacity as Special Master for TARP Executive Compensation.

Law Clerk, Judge Amalya Kearse, United States Court of Appeals for the Second Circuit (August 2005 to August 2006). I previously served as a Law Clerk at the United States Court of Appeals for the Second Circuit, located at 40 Foley Square, New York, New York. My responsibilities included advising the Judge regarding cases before the Court.

Law Intern, United States Department of Justice Counterterrorism Unit (September 2004 to May 2005). I previously served at the Department of Justice's Counterterrorism Unit, located at 950 Pennsylvania Avenue NW, Washington, D.C., 20530-0001, through a clinical program at Harvard Law School. I prepared memoranda and analysis on jury instructions used in the prosecution of terrorists.

Judicial Intern, Judge Robert D. Sack, United States Court of Appeals for the Second Circuit (May 2002 to August 2002). I served as a Judicial Intern at the United States Court of Appeals for the Second Circuit, which is located at 40 Foley Square, New York, New York. My responsibilities included advising the Judge and his Law Clerks regarding cases before the Court.

Judicial Intern, Office of the Administrative Assistant to the Chief Justice of the United States (January 2000 to May 2000). I served as an Intern in the office of James Duff, Administrative Assistant to Chief Justice William H. Rehnquist, at the Supreme Court of the United States, located at One First Street NE, Washington, D.C.

Published Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Jackson, Jr., Robert Joseph

Published Writings:

The Many Modern Sources of Business Law (with Colleen Honigsberg), *forthcoming in* THE CORPORATE CONTRACT IN CHANGING TIMES (William Savitt, Steven Davidoff Solomon & Randall Thomas, eds.) (2017).

Is EU Merger Control Used for Protectionism? An Empirical Analysis (forthcoming, J. L EMPIRICAL STUD.), at https://papers.ssrn.com/sol3/ papers.cfm?abstract_id=3003955.

The Value of Takeover Defenses: Evidence from Exogenous Shocks to Closed-End Mutual Funds (with Martijn Cremers and John Morley) (working paper, January 2017).

Activist Directors and Information Leakage (with Robert E. Bishop and Joshua Mitts) (working paper, January 2017).

Master Mergers & Acquisitions, ISDE School (Jan 17, 2017) (video), at https://www.youtube.com/watch? v=jBjVD2Y6vcE.

What Happens When Loans Become Legally Void? Evidence from a Natural Experiment (working paper December 2016) (with Colleen Honigsberg and Richard Squire) (revise and resubmit, J. L. & ECON.).

INVESTOR RESPONSIBILITY RESEARCH CENTER INSTITUTE ANNUAL INVESTOR RESEARCH COMPETITION, (December 7, 2016) (Judge), at https://irrcinstitute.org/news/winners-of-2016-irrc-institute-research-award-examine-controversial-investor-issue-of-short-termism/.

The Rise of Corporate Governance (working paper October 2016) (with Alon Bebchuk).

How Quickly do Markets Learn? Private Information Dissemination in a Natural Experiment (working paper October 2016) (with Wei Jiang and Joshua Mitts) (revise and resubmit, J. FIN).

Testimony Before the Federal Election Commission Forum on Corporate Political Spending and Foreign Influence (June 23, 2016), transcript at http://www.fec.gov/members/weintraub/text/Jackson.pdf.

Brief of Sixteen Professors of Administrative Law and Financial Regulation as Amici Curiae to the United States Court of Appeals for the D.C. Circuit in Metlife v. Financial Stability Oversight Council (principal coauthor, with Michael S. Barr and Gillian E. Metzger), No. 16-5806 (June 23, 2016), at https://www.metlife.com/assets/cao/ sifiupdate/FSOC-amicus_Brief_for_Ad_Law_Professors.pdf.

Jackson, Jr., Robert Joseph

Published Writings:

The LendingClub Distraction, WALL ST. J. (May 18, 2016), at http://www.wsj.com/articles/the-lendingclub-distraction-1463610960.

The CROWN Database: Research and Regulatory Applications, PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD, (April 25, 2016) (presentation with Colleen Honigsberg).

System and Method for Extracting Table Data from Text Documents Using Machine Learning (with Joshua Mitts and Jing Zhang), United States Patent Application Publication No. US 2016/0104077 A1 (April 14, 2016) (patent application).

Machine Learning Extraction of Free-Form Textual Rules and Provisions from Legal Documents (with Joshua Mitts), United States Patent Application Publication No. US 2016/0103823 A1 (April 14, 2016) (patent application).

2015 MILLSTEIN GOVERNANCE FORUM: THE CROWN DATABASE (February 8, 2016) (keynote address), video at https://www.youtube.com/watch? v=VcqfNVKf5F4.

Hindering the SEC From Shining a Light on Political Spending, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (December 21, 2015) (with Lucian Bebchuk) (blog post), at https://corpgov.law.harvard.edu/ 2015/12/21/hindering-the-sec-from-shining-a-light-on-political-spending/.

Brief of Nineteen Corporate Law Professors as Amicus Curiae to the Supreme Court of the United States in Fredrichs v. California Teachers Association (joined), No. 14-915 (November 8, 2015), at https://papers.ssrn.com/sol3/papers.cfm?abstract_id =2687241.

Brief of Scholars of Constitutional and Corporate Law as Amicus Curiae to the Santa Clara County Superior Court of California in Horizon Pharma v. Anido et al. (with Lucian A. Bebchuk and Gillian Metzger), No. 1:15-CV-283835 (November 5, 2015).

Fifty-Eight Members of the US House of Representatives Support the Rulemaking Petition for Transparency in Corporate Political Spending, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (October 26, 2015) (with Lucian Bebchuk) (blog post), at https://corpgov.law.harvard.edu /2015/10/26/fifty-eight-members-of-the-us-house-of-representatives-support-the-rulemaking-petition-for-transparency-in-corporate-political-spending/.

Individual Investors and Mandatory Disclosure: Evidence from the JOBS Act, 93 WASH. U. L. REV. 293 (2015) (with Colleen Honigsberg and Yu-Ting Forester Wong).

Published Writings:

The 8-K Trading Gap (with Alma Cohen and Joshua Mitts) (working paper, September 2015).

Hillary Clinton Announces Support for SEC Rulemaking on Corporate Political Spending, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG., (September 8, 2015) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2015/09/08/hillary-clinton-announces-support-for-sec-rulemaking-on-corporate-political-spending/.

Cost-Benefit Analysis and the Courts, 78 LAW & CONTEMP. PROBS. 55 (2015).

Forty-Four U.S. Senators Support the Rulemaking Petition for Transparency in Corporate Political Spending, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG., (September 2, 2015) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu /2015/09/02/forty-four-us-senators-support-the-rulemaking-petition-for-transparency-in-corporate-political-spending/.

Brief of Thirty-Eight Corporate and Securities Law Professors as Amicus Curiae to the United States Court of Appeals for the Third Circuit in Wal-Mart Stores, Inc. v. Trinity Wall Street (joined), No. 1:14-CV-00405-LPS (February 11, 2015), at http://www. youngconaway.com/files/upload/BriefAmiciCuriae.pdf.

The SEC's Holiday Gift to High-Speed Traders, COLUMBIA LAW SCHOOL BLUE SKY BLOG (December 11, 2014) (with Joshua Mitts), at http://clsbluesky.law.columbia.edu/2014/12/11/the-secs-holiday-gift-to-high-speed-traders/.

How the SEC Helps Speedy Traders (working paper, November 2014) (with Joshua Mitts), at https://papers.ssrn.com/sol3/ Delivery.cfm/SSRN_ID2532583_code213269.pdf?abstractid=2520105&type=2.

Toward a Constitutional Review of the Poison Pill, 114 COLUM. L. REV. 1549 (2014) (with Lucian A. Bebchuk).

Why Commissioner Gallagher Is Mistaken about Disclosure of Political Spending, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (November 10, 2014) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2014/11/10/why-commissioner-gallagher-is-mistaken-about-disclosure-of-political-spending/.

Letter to SEC Inspector General Carl W. Hoecker Regarding FOIA Requests (October 23, 2014).

Jackson, Jr., Robert Joseph

Published Writings:

HSBC Student Series on Ethics and Accountability, *Corporate Integrity and Transparency: Stories from the Frontline with Robert J. Jackson, Jr.*, BARUCH COLLEGE CENTER FOR CORPORATE INTEGRITY, (October 8, 2014), at http://zicklin.baruch.cuny.edu/ centers/zcci/zcci-events/hsbc-student-series-on-ethics-and-accountability.

SEC Disclosure Conference, SECDISCLOSE.ORG (September 24, 2014), video at https://www.youtube.com/watch?v=9o7nrb3gJGU.

The Million-Comment-Letter Petition: The Rulemaking Petition on Disclosure of Political Spending Attracts More than 1,000,000 SEC Comment Letters, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (September 4, 2014) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2014/09/04/the-million-comment-letter-petition-the-rulemaking-petition-on-disclosure-of-political-spending-attracts-more-than-1000000-sec-comment-letters/.

The Hidden Nature of Executive Retirement Pay, 100 VA. L. REV. 479 (2014) (with Colleen Honigsberg).

Corporate Governance and Executive Compensation: Evidence from Japan, 2014 COLUM. BUS. L. REV. 111 (2014) (with Curtis Milhaupt).

Team Production and Bank Governance, BERLE VI: BLAIR AND STOUT AND BEYOND (June 24, 2014) (presentation).

UCLA SCHOOL OF LAW, *A Conference and Micro-Symposium on Competing Theories of Corporate Governance* (April 12, 2014) (presentation).

Our Debate on the Williams Act and Shareholder Activism: Takeaways for the SEC, COLUMBIA LAW SCHOOL BLUE SKY BLOG, (April 8, 2014) (blog post).

Toward a Constitutional Review of the Poison Pill: A Reply to Wachtell Lipton, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (March 17, 2014) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2014/03/17/toward-a-constitutional-review-of-the-poison-pill-a-reply-to-wachtell-lipton/.

Toward a Constitutional Review of the Poison Pill, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (March 4, 2014) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard .edu/2014/03/04/toward-a-constitutional-review-of-the-poison-pill/.

Published Writings:

The Hidden Nature of Executive Retirement Pay, COLUMBIA LAW SCHOOL BLUE SKY BLOG (February 19, 2014) (with Colleen Honigsberg) (blog post), at http://clsbluesky.law.columbia.edu/2014/02/19/the-hidden-nature-of-executive-retirement-pay/.

A New Science of Pension Fund Management, THE HUFFINGTON POST (with Steve Currall and Brad Barber) (February 15, 2014) (blog post), at http://www.huffingtonpost.com/steve-currall/a-new-science-of pension-_b_4435821.html.

Activist Investors and the SEC: The Case Against "Modernization" of the Williams Act, AKIN GUMP STRAUS HAUER & FELD LLP, (January 30, 2014) (presentation).

Global Alliance Workshop, FGV DIREITO SP (Brazil), (January 28, 2014) (video), at https://www.youtube.com/watch?v=rldLZ0nq0F0.

Columbia's Law and Business Schools Host Treasury Officials, Encourage Careers in Public Service, COLUMBIA CLUB (January 22, 2014) (introductory remarks), at http://www.law.columbia.edu/media_inquiries/news_events/2014/january2014/treasury-event.

COLUMBIA LAW SCHOOL DATALAB, *The 8-K Trading Gap* (visualization of data on insider trading) (2014), at http://bj1.law.columbia.edu/8kgap.

COLUMBIA LAW SCHOOL DATALAB, *EDGAR Monitoring Heatmap* (visualization of data on SEC system delays) (2014), at http://bj1.law.columbia.edu/heatmap.

The SEC Delays its Consideration of Rules Requiring Disclosure of Corporate Political Spending, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG., (December 2, 2013) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2013/12/02/the-sec-delays-its-consideration-of-rules-requiring-disclosure-of-corporate-political-spending/.

Addressing Congress on the Need for Transparency in Corporate Political Spending, COLUMBIA LAW SCHOOL BLUE SKY BLOG (October 30, 2013) (blog post), at http://clsbluesky.law.columbia.edu/2013/10/30/addressing-congress-on-the-need-for-transparency-in-corporate-political-spending/.

MANHATTAN INSTITUTE, *Center for Legal Policy and Proxy Monitor Conference*, (September 17, 2013) (panelist), video at https://www.youtube.com/watch?v=IlMb-rV7Pjk.

Published Writings:

Pre-Disclosure Accumulations by Activist Investors: Evidence and Policy, 39 J. CORP. L. 1 (2013) (with Lucian Bebchuk, Alon Brav, and Wei Jiang).

Call for Proposals: The Purpose, Use, and Potential Misuse of Stock Prices in the Public Equity Markets, COLUMBIA LAW SCHOOL BLUE SKY BLOG, (August 12, 2013) (blog post), at http://clsbluesky.law.columbia.edu/2013/08/12/call-for-proposals-the-purpose-use-and-potential-misuse-of-stock-prices-in-the-public-equity-markets/.

Responding to Objections to Shining Light on Corporate Political Spending (7): Claims About the Costs of Disclosure, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (June 24, 2013) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2013 /06/24/responding-to-objections-to-shining-light-on-corporate-political-spending-7-claims-about-the-costs-of-disclosure/.

Sustainable Investment Research Initiative (SIRI) Investment Performance Research Presentation, UC DAVIS GRAD. SCH. MGMT., (June 17, 2013), at http://gsm.ucdavis.edu/news-release/uc-davis-graduate-school-management-present-sustainability-investment-performance-resea.

Responding to Objections to Shining Light on Corporate Political Spending (6): The Claim that Disclosure Rules are Prohibited by the Constitution, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG., (June 3, 2013) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2013/06/03/responding-to-objections-to-shining-light-on-corporate-political-spending-6-the-claim-that-disclosure-rules-are-prohibited-by-the-constitution/.

SEC Comment Letter: Shining Light on Corporate Political Spending, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (May 20, 2013) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2013/05/20/sec-comment-letter-shining-light-on-corporate-political-spending/.

Rulemaking Petition on Disclosure of Political Spending Attracts Support from More Than 500,000 Comment Letters Filed with the SEC, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG., (May 13, 2013) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard. edu/2013/05/13/rulemaking-petition-on-disclosure-of-political-spending-attracts-support-from-more-than-500000-comment-letters-filed-with-the-sec/.

Published Writings:

Responding to Objections to Shining Light on Corporate Political Spending (5): The Claim that Shareholder Proposals Requesting Disclosure Do Not Receive Majority Support, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (April 29, 2013) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu /2013/04/29/responding-to-objections-to-shining-light-on-corporate-political-spending-5-the-claim-that-shareholder-proposals-requesting-disclosure-do-not-receive-majority-support/.

Responding to Objections to Shining Light on Corporate Political Spending (4): The Claim that Such Disclosure Would Give a Political Advantage to Unions, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (April 25, 2013) (with Lucian A. Bebchuk) (blog post), https://corpgov.law.harvard.edu/2013/04/25/responding-to objections-to-shining-light-on-corporate-political-spending-4-the-claim-that-such-disclosure-would-give-a-political-advantage-to-unions/.

Responding to Objections to Shining Light on Corporate Political Spending (3): The Claim that Political Spending is Good for Shareholders, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (April 15, 2013) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/2013/04/15/responding-to-objections-to-shining-light-on-corporate-political-spending-3-the-claim-that-political-spending-is-good-for-shareholders/.

Responding to Objections to Shining Light on Corporate Political Spending (2): Claims of Special Interest Influence, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (April 10, 2013) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu/ 2013/04/10/responding-to-objections-to-shining-light-on-corporate-political-spending-2-claims-of-special-interest-influence/.

Responding to Objections to Shining Light on Corporate Political Spending (1): The Claim of Immateriality, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (April 4, 2013) (with Lucian A. Bebchuk) (blog post), https://corpgov.law.harvard.edu/2013/04/ 04/responding-to-objections-to-shining-light-on-corporate-political-spending-1-the-claim-of-immateriality/.

New York Officials Urge SEC To Adopt Rules Requiring Public Companies to Disclose Political Spending, COLUMBIA LAW SCHOOL BLUE SKY BLOG, (March 22, 2013) (blog post), at http://clsbluesky.law.columbia.edu/2013/03/22/new-york-officials-urge-sec-to-adopt-rules-requiring-public-companies-to-disclose-political-spending/.

Jackson, Jr., Robert Joseph

Published Writings:

Lee Pacchia, *Can Feds Force Companies to Disclose Political Spending?*, BLOOMBERG LAW (January 31, 2013), (video) at https://www.youtube.com/watch?v=zB0aSgxqdRE.

Shining Light on Corporate Political Spending, 101 GEO. L.J. 923 (2013) (with Lucian A. Bebchuk).

The Case for Transparency in Corporate Political Spending, COLUMBIA LAW SCHOOL BLUE SKY BLOG (January 30, 2013) (blog post), at http://clsbluesky.law.columbia.edu/2013/01/30/the-case-for-transparency-in-corporate-political-spending/.

Private Equity and Executive Compensation, 60 U.C.L.A. L. REV. 638 (2013).

COLUMBIA LAW SCHOOL, 2012 WILLIS L. M. REESE PRIZE FOR EXCELLENCE IN TEACHING, *Commencement Address*, (May 17, 2012), at http://www.law.columbia.edu/graduation/2012/reese-prize.

Stock Unloading and Banker Incentives, 112 COLUM. L. REV. 951 (2012).

Will the SEC Facilitate Shareholder Access to the Ballot Under Rule 14a-8?, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG., (April 29, 2012) (with Gabriella Wertman) (blog post), at https://corpgov.law.harvard.edu/2012/04/29/will-the-sec-facilitate-shareholder-access-to-the-ballot-under-rule-14a-8/.

The Law and Economics of Blockholder Disclosure, 1 HARV. BUS. L. REV. 39 (Spring 2012) (with Lucian Bebchuk).

The Attorney General/Federal Mortgage Settlement and its Implications for Housing Finance, NATIONAL STATE ATTORNEYS GENERAL PROGRAM, COLUMBIA LAW SCHOOL (February 23, 2012) (speaker), at http://www.law.columbia.edu/attorneys-general/policy-areas/consumer-protection/home-foreclosure-predatory-lending/national-mortgage-settlement.

Testimony Before the Senate Subcommittee on Financial Institutions and Consumer Protection on Incentive Compensation at Large Financial Institutions, (February 15, 2012), *at* https://www.banking.senate.gov/public/_cache/files/750d43e6-31c7-4be0-9812ce8111b772a/23C6AE00CC53D93492511CC744028B5E.jacksontestimony21512.pdf.

Monika Mitchell, Robert J. Jackson: *The Economics of Integrity,* GOOD BUSINESS NEW YORK!, (November 11, 2011), at https://www.youtube. com/watch?v=BmNCkCMZo7E.

Jackson, Jr., Robert Joseph

Published Writings:

Petition for SEC Rulemaking to Require Disclosure of Corporate Political Spending to Public Company Shareholders, File No. 4-637, filed with the Securities and Exchange Commission (August 2011), *at* https://www.sec.gov/rules/petitions/2011/petn4-637.pdf.

Comment Letter to the Securities and Exchange Commission on Regulation of Incentives at Financial Institutions (May 31, 2011), at https://www.sec.gov/comments/s7-12-11/s71211-718.pdf.

SEC Strengthens Shareholders' Role in Corporate Political Speech Decisions, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (May 15, 2011) (blog post), at https://corpgov.law.harvard.edu /2011/05/15/sec-strengthens-shareholders-role-in-corporate-political-speech-decisions/.

Accountability After Citizens United, BRENNAN CENTER FOR JUSTICE CONFERENCE (April 29, 2011) (panelist) at https://www.brennancenter.org/sites/default/files/events/Accoutability%20After%20Citizens%20United%20panel%20one.pdf.

Over the Horizon: Consumer Credit After the Crisis, NTL. ASSOC. OF ATTORNEY GENERALS (NAAG) PRESIDENTIAL INITIATIVE (April 12, 2011) (presentation).

Corporate Political Speech: Who Decides? 124 HARV. L. REV. 82 (2010) (with Lucian Bebchuk).

Corporate Law and Political Spending, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (December 1, 2010) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu /2010/12/01/corporate-law-and-political-spending/.

Larry Kudlow, *Is this Really the End of Bailout Nation?* KUDLOW'S MONEY POLITIC$ (September 30, 2010) (television appearance), at http://kudlowsmoneypolitics.blogspot.com/2010/09/on-cnbcs-kudlow-report-tonight_30.html.

Corporate Political Speech: Who Decides?, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (September 8, 2010) (with Lucian A. Bebchuk) (blog post), at https://corpgov.law.harvard.edu /2010/09/08/corporate-political-speech-who-decides/.

Sara Behunek, *Feinberg's Deputy on Executive Compensation*, THE DEAL PIPELINE (July 28, 2010), at https://vimeo.com/13704814.

Interview with Robert J. Jackson, Jr., C SUITE INSIGHT (2010), at http://www.equilar.com/pdf/c-suite/CSuiteInsight_vol1_issue03.pdf.

Published Writings:

PRINCETON UNIVERSITY WOODROW WILSON SCHOOL PROGRAM IN LAW AND PUBLIC AFFAIRS, *Regulating Executive Compensation: Ought There to be a Law?,* (September 29, 2009) (panelist), at https://www.youtube.com/watch?v=ySjhTO55L1g.

Hedge Fund Investor Activism and Takeovers, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (December 11, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/12/11/hedge-fund-investor-activism-and-takeovers/.

Michael Jensen's and Werner Erhard's Talk on Integrity, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (November 9, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/11/09/michael-jensens-and-werner-erhards-talk-on-integrity/.

Can Third Parties Be Held Liable for Securities Fraud? Gearing Up for Stoneridge, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (September 25, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/09/25/can-third-parties-be-held-liable-for-securities-fraud-gearing-up-fo/.

Does Delaware Compete?, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (September 24, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/09/24/does-delaware-compete/.

Vintage Capital and Credit Protection, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (September 21, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/09/21/vintage-capital-and-credit-protection/.

Weisbach on Pay without Performance, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (September 12, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/09/12/weisbach-on-pay-without-performance/.

Shareholder Activists Risk Destroying Board Effectiveness, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (June 22, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/06/22/shareholder-activists-risk-destroying-board-effectiveness/.

A Friendly Tale of Hot Dogs and Trainwrecks, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (June 22, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/06/19/a-friendly-tale-of-hot-dogs-and-trainwrecks/.

Published Writings:

Does Enforcement Intensity Explain Financial Development?, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (May 3, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/05/03/does-enforcement-intensity-explain-financial-development/.

Does Political Stability Lead to Financial Development?, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (April 19, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/04/19/does-political-stability-lead-to-financial-development/.

Toward Common Sense and Common Ground?: Remarks from Vice Chancellor Strine, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (March 31, 2007) (blog post), at https://corpgov.law.harvard. edu/2007/05/31/toward-common-sense-and-common-ground-remarks-from-vice-chancellor/.

WLRK Memorandum on The Caremark Chronicles, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (March 27, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/03/27/wlrk-memorandum-on-the-caremark-chronicles/.

Ehud Kamar's Study on the Consequences of SOX, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (March 21, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/03/21/is-sarbanes-oxley-driving-small-firms-out-of-us-public-equity-marke/.

Chancery Addresses Deficient Board Procedures in Approving Private Equity Transactions, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (March 20, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/03/20/chancery-addresses-deficient-board-procedures-in-approving-private/.

A Controversial New Proposal for Regulating Foreign Financial Services, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (February 8, 2007) (blog post), at https://corpgov.law.harvard.edu/2007/02/08/ acontroversial-new-proposal-for-regulating-foreign-financial-servi/.

Initial Public Offerings Increase in 2006: Are We Entering a "Hot Period"?, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (January 19, 2007) (blog post), at https://corpgov.law.harvard .edu/2007/01/19/initial-public-offerings-increase-in-2006-are-we-entering-a-hot-per/.

A New Model of Administrative Enforcement, 93 VA. L. REV. 1983 (2007) (with David Rosenberg).

Jackson, Jr., Robert Joseph

Published Writings:

Directors Ignore Majority-Shareholder Malfeasance at their Peril, HARVARD LAW SCH. FORUM ON CORP. GOV. AND FIN. REG. (December 22, 2006) (blog post), at https://corpgov.law.harvard.edu/2006/12/22/directors-ignore-majority-shareholder-malfeasance-at-their-peril/.

Improving Employment Outcomes Through the Massachusetts Parole Board's Regional Reentry Center Initiative: Policy Analysis and Recommendations (working paper December 2006) (with Jesse Jannetta), at https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID950890_code 461540. pdf?abstractid=950890&type=2.

Comment Letter to the Securities and Exchange Commission on Proposed Requirements for Disclosing Executive Retirement Benefits, (April 14, 2006) (with Lucian A. Bebchuk and Jessie M. Fried), at https://www.sec.gov/rules/proposed/s70306/lbebchuk5984.pdf.

Note, *Rethinking Retroactivity*, 118 HARV. L. REV. 1642 (2005).

Executive Pensions, 30 J. CORP. L. 102 (2005) (with Lucian Bebchuk), at https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID694766_code542089.pdf?abstractid=694766&type=2.

Comment, *State Sentencing Guidelines—Sixth Amendment*, 118 HARV. L. REV. 333 (2004).

Nine Justices, Ten Years: A Statistical Retrospective, 118 HARV. L. REV. 510 (2004).

Appellate Procedure—Force of Circuit Precedent, 117 HARV. L. REV. 719 (2003).

Political Affiliations:

List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I have never been a member of, nor held office in, any political party or election committee; I am a registered Independent. However, I served on an informal basis as an adviser to Secretary Clinton's economic-policy team in connection with her candidacy for President of the United States from late 2015 until November 2016. I did not have a formal title. My responsibilities included responding to questions from the Secretary's economic-policy team related to potential corporate-law and securities-regulation implications of certain campaign proposals.

Political Contributions: Itemize all political contributions of $500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

In October 2016, I co-hosted a fundraiser on behalf of the Hillary Victory Fund in connection with Secretary Clinton's run to serve as President of the United States. My total contributions to the Fund, including those associated with the fundraiser, were $10,023.34.

In April 2016, I contributed $500.00 to Josh Gottheimer for Congress in support of my college friend's run to serve as a Member of Congress for the Fifth District of New Jersey. Mr. Gottheimer was elected, and now serves as the Fifth District's Congressman.

Future Employment: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

As described in the ethics agreement that I have entered into with the U.S. Securities and Exchange Commission's (SEC's) Designated Agency Ethics Official (DAEO), which has been provided to the Committee, if confirmed by the Senate I will accept a tenured position at New York University School of Law (NYU) and immediately go on leave. Pursuant to the standard benefits offered to professors, I will receive NYU housing.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

As described in the ethics agreement that I have entered into with the SEC's DAEO, which has been provided to the Committee, I will be on leave from a tenured position at NYU. I will resume my position as a tenured member of the NYU faculty upon completion of my government service.

3. Has anybody made you a commitment to a job after you leave government?

As described in the ethics agreement that I have entered into with the SEC's DAEO, which has been provided to the Committee, I will be on leave from a tenured position at NYU. I will resume my position as a tenured member of the NYU faculty upon completion of my government service.

Jackson, Jr., Robert Joseph

Future Employment:	4. Do you expect to serve the full term for which you have been appointed? Yes.
Qualifications:	Please find a statement of my qualifications to serve as a Member of the Securities and Exchange Commission attached as ***Annex A.***
Potential Conflicts of Interest:	1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated. None. 2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated. In connection with the nomination process, I have consulted with the Office of Government Ethics (OGE) and the SEC's DAEO to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the SEC's DAEO and that has been provided to the Committee. 3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated. In connection with the nomination process, I have consulted with the OGE and the SEC's DAEO to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the SEC's DAEO and that has been provided to the Committee. 4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy. None.

Jackson, Jr., Robert Joseph

Potential Conflicts of Interest:

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

In connection with the nomination process, I have consulted with the OGE and the SEC's DAEO to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I have entered into with the SEC's DAEO and that has been provided to the Committee. I am not aware of any other potential conflicts of interest.

Civil, Criminal, and Investigatory Actions:

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

While serving at the Department of the Treasury in 2009, I recused myself from matters related to Bank of America, which I had previously represented in private practice. I consulted with Treasury's DAEO to determine whether recusal was appropriate and, following the DAEO's advice, I recused and did not participate in any particular matter involving that firm. In March 2010, a Member of Congress requested that the Special Inspector General for the Troubled Asset Relief Program review potential conflicts of interests among Treasury attorneys working in the Office of the Special Master for TARP Executive Compensation. The Office of the Inspector General began its review in April 2010, and in August 2011 that Office informed Treasury that it had completed the task that the Member had requested and that no further review was warranted.

In 2001, a Florida police officer mistakenly detained me in connection with an incident involving petit theft from a grocery store of items worth less than $10.00. Although I was briefly held and charged, the State immediately recognized its error, took the rare step of filing a "no action" dismissal shortly after my arrest, and privately conveyed its apologies to my counsel. In connection with my previous federal employment, including my employment with the Department of Justice, the federal judiciary, and the Department of the Treasury, research on my background has been conducted by the Federal Bureau of Investigation, the Federal Marshals Service, and the Secret Service. In each case, I have disclosed these events and the State's swift correction of its error to investigators, and in each case, the events posed no issue to my clearance for federal employment.

Civil, Criminal, and Investigatory Actions:

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

I have never been the subject of any proceeding, inquiry or investigation by any professional association.

Jackson, Jr., Robert Joseph

ANNEX A
QUALIFICATIONS

It is an extraordinary honor to be nominated to serve as a Commissioner of the Securities and Exchange Commission. If confirmed, I will bring long experience advancing transparency in financial markets to bear on the Commission's critical mission of protecting investors, maintaining fair markets, and facilitating capital formation.

Since 2010, I have been a Professor at Columbia Law School, where my research focuses on finding evidence-driven solutions to some of the most challenging issues in securities law. I am the Founding Director of the Law School's DataLab, which uses cutting-edge technology to study the reliability of corporate disclosures. In one recent project, our team used advanced computer science techniques to identify high-speed trading activity on the SEC's filing systems—and worked to help the SEC modernize its approach to create a level playing field for investors. In another, we used similar tools to shine light on trading activity before the announcement of major corporate events. Both projects have helped regulators identify ways that technology can better protect investors. I have been gratified that our work has been the subject of commentary before several federal agencies, including the Federal Reserve and the SEC.

I have also worked to bring transparency to markets and to the SEC itself. For example, I advocated for the disclosure of additional information about stockbroker fraud, leading to new research that helped expose the brokers most likely to defraud investors. I also co-chaired a group of legal scholars that petitioned the SEC to require public companies to disclose when they spend shareholder money on politics—a proposal that has now drawn more regulatory commentary than any other petition in the Commission's history.

My experience teaching corporate and securities law will also make me a more effective Commissioner if I am confirmed. My students have been important partners in my work throughout my career, both as a researcher and in the classroom. I was honored when Columbia Law School and its students awarded me the Willis Reese Prize for Excellence in Teaching. And I am especially grateful to follow in the footsteps of my predecessors at Columbia, Harvey Goldschmid and William Carey, both of whom were exceptional law teachers—and also served with great distinction on the Commission.

Before joining the Columbia faculty, I served as a senior policy advisor at the United States Department of the Treasury, working with Kenneth Feinberg, the Special Master for TARP Executive Compensation. At Treasury, I oversaw the development of policies designed to give shareholders a say on executive pay, improve the disclosure of executives' bonuses, and make sure that financial institutions who received federal assistance during the financial crisis tied executive pay more closely to performance. If I am confirmed, I plan to bring my experience conceiving, developing, and executing on policies that protect investors to bear on the SEC's work. And I believe this experience will help me and my fellow Commissioners identify innovative ways to protect investors while ensuring that American capital markets remain the envy of the world.

Jackson, Jr., Robert Joseph

Prior to joining the Treasury Department, I was an attorney at the law firm Wachtell, Lipton, Rosen & Katz. Before attending law school, I also served as a strategic advisor to public companies and as an investment banker. I believe that my experience in private practice—and the opportunity to observe, firsthand, how securities law can influence the behavior of corporations and investors alike—will give me important perspective on the SEC and its work.

I also believe that my education, and particularly my training in law and finance, has prepared me to be an effective Commissioner. I earned law and public policy degrees from Harvard, an MBA in Finance from the Wharton School of Business, and two bachelor's degrees from the University of Pennsylvania. My interdisciplinary background, and the understanding of financial markets that comes with it, has been critical to my work as a teacher and scholar. And I believe that this training will allow me to engage with fellow Commissioners and the Commission's Staff on the increasingly complex questions raised by today's capital markets.

It is my enormous privilege to be nominated to serve as a Commissioner on the Securities and Exchange Commission. If confirmed, I will work tirelessly to bring all of my knowledge and experience—as a legal scholar, teacher, policymaker, and practitioner—to bear on the Commission's crucial task.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN FROM DAVID J. RYDER

Q.1. Under the advice of the Office of Government Ethics, you have agreed, if confirmed as Director of the Mint, to recuse yourself from any decisions involving your former employer, Honeywell.

What types of contracts and other business arrangements does the Mint currently have with Honeywell? If you recuse yourself from a decision involving Honeywell, who will make those decisions in your place?

A.1. It is my understanding that the Mint's only business arrangement with Honeywell is a purchase order (about $22K) with Honeywell Safety Products for training at the United States Mint in Philadelphia. If confirmed, I will adhere to all applicable ethics laws, rules, and policies. Should I have a question concerning my ethical obligations, I will seek the counsel of appropriate ethics staff. Additionally, if a situation arises in which the Director of the Mint is recused, it is my understanding that the Deputy Director of the Mint would handle such matters.

Q.2. As Senator Scott referenced during your nomination hearing, the Mint suspended its Mutilated Coin Redemption Program in November 2015 amid concerns about unlawful activity in the program. The Mint has since issued a proposed rule that would allow the Mint to add further precertification, documentation, and testing requirements for individuals or companies submitting mutilated coins for redemption.

During the 2 years that the program has been suspended, companies have accumulated a significant backlog of mutilated coins that cannot be circulated or disposed of without the Mint. Do you believe the proposed rule will fully address the concerns that the Mint has expressed about the integrity of the program? Will the Mint work with individuals and companies that may have large backlogs to accommodate unusually large redemptions as the program restarts?

A.2. On November 2, 2015, the Mint suspended the exchange program to assess the security of the program and develop additional safeguards to ensure the integrity of the United States coinage. A Notice of Proposed Rulemaking was published in the *Federal Register* on September 19, 2017, inviting the public to comment on proposed revised regulations for the program. I understand an important part of the rulemaking process that remains ongoing is reviewing public comments to further consider the impact of the regulation's measures on addressing security risks while maintaining access to an effective program for participants. Although I have not been part of the rulemaking's development or the upcoming process of evaluating potential comments, I do believe the Mint has taken important steps to strengthen the program.

Furthermore, I recognize the importance of resuming the program to individuals and companies that have large backlogs. I support the Mint's intent to expeditiously resume the program, and I look forward to working with you and your staff to ensure the Program remains a cost-effective way for the public to redeem damaged coins.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR ROUNDS FROM DAVID J. RYDER

Q.1. Mr. Ryder, I appreciated meeting with you recently. I understand that you previously served as Director of the Mint under President George H.W. Bush, and additionally as the Deputy Treasurer.

What do you believe has changed from working as Director under President H.W. Bush and now? Are there any new challenges that you believe the Mint is facing today?

A.1. Circulating coin redesign has changed dramatically since 1992, which has contributed millions of dollars to the general fund. I believe that the Mint has also been improving their manufacturing processes which has resulted in fewer errors in coin manufacturing. For example, the Mint has reported that its Mint Quality Index (MQI) went from the low 70s in 2007 to a rating of 99.3 percent in 2014 for circulating coins at the Denver and Philadelphia facilities. Additionally, I believe the Mint's customer service has improved dramatically in the commemorative and bullion sales area.

One of my challenges will be the implementation of the Mint's new 5-year strategic plan which focuses on: (1) the work place environment; (2) improving the Mint's management and governance; and (3) integrating technology into operations and support lines.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN FROM HESTER M. PEIRCE

Q.1. Although materiality has long been the foundation of the SEC's disclosure requirements, the SEC has, over time, supplemented this standard with specific bright-line rules. For example, the SEC requires disclosure of specified information related to executive compensation, corporate governance, and internal controls. Do you agree that bright-line rules can be useful to both companies and investors by supplementing the traditional materiality standard?

A.1. As you note, materiality is the touchstone for companies' disclosure under the securities laws. Bright-line rules can be useful in guiding companies' disclosure efforts, but materiality should be the controlling principle for the SEC in formulating bright-line disclosure rules and disclosure guidance.

Q.2. Speaking at NYU's School of Law earlier this year, Chair Clayton said, "I am not comfortable that the American investing public understands the substantial risk that we face systemically from cyber issues and I would like to see better disclosure around that." Two days later, the Equifax breach proved him right.

If confirmed, would you commit to working with Chair Clayton and the other Commissioners to revise cyber risk disclosure requirements, including considering a specific 8-K reporting item for cybersecurity breaches that expose personally identifiable information?

A.2. I share your and Chairman Clayton's concern that investors need to understand the material cybersecurity risks that companies face. If confirmed, I commit to working with Chairman Clayton, my fellow Commissioners, and the staff of Corporation Finance to consider whether companies need additional guidance for cybersecurity reporting and what form such guidance should take, including potentially a specific Form 8-K reporting requirement.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TOOMEY FROM HESTER M. PEIRCE

Q.1. It is my understanding that Initial Coin Offerings (ICOs) and crypto-currencies have raised billions thus far in 2017. This represents an exponential growth in recent years.

I was glad to see the SEC begin to closely examine this market, and I applaud the SEC for its recent issuance of the Investigative Report regarding the DAO. The Investigative Report was an important step in bringing some clarity to the ICO market in explaining how securities laws apply to ICOs depending on the "facts and circumstances."

Although the DAO report was helpful, I worry that a continued lack of clarity in ICO regulation will stifle innovation and, most importantly, leave investors at risk.

Should the SEC do more to bring clarity to the ICO market?

A.1. The SEC's 21(a) report on the DAO was a useful first step in providing clarity in the ICO market. As the report noted, the facts and circumstances surrounding an ICO determine whether and how securities laws are implicated. As it gains more experience with ICOs, the SEC should look for additional opportunities to provide clarity—perhaps through a guidance document—to the market about conducting ICOs in compliance with the securities laws. To the extent the SEC brings enforcement actions in this area, it should identify with specificity how a particular ICO violated the securities laws to give market participants clear examples of what they should not do.

Q.2. Aside from enforcement actions, what can the SEC do to provide certainty to the ICO market? Would a proposed rulemaking make sense?

A.2. A proposed rulemaking might make sense. Alternatively, the SEC could consider issuing a concept release, conducting public roundtables, or otherwise soliciting input from a broad array of market participants and other interested parties before undertaking a rulemaking. If I am confirmed, I look forward to working with my fellow Commissioners and the SEC staff to assess appropriate next steps regarding ICOs. The SEC also should work with the CFTC to help to clarify when ICOs implicate each agency's regulatory regime.

Q.3. The SEC is about to implement the initial operating stage of the Consolidated Audit Trail (CAT). Exchanges will soon begin reporting to what will be a massive database, which will include a significant amount of highly sensitive information. In its second phase, CAT will begin receiving personally identifiable information (PII) of brokerage customers. The recent breach of the SEC's EDGAR database, however, calls into question the security of the SEC's information technology.

Will you commit not to collect any PII until you are confident that CAT is not susceptible to a breach?

A.3. If I am confirmed, I commit to working with my fellow Commissioners, the SEC staff, and the self-regulatory organizations participating in CAT to ensure that, to the extent PII needs to be collected, it is not susceptible to a breach.

Q.4. We usually think of outside hackers when we think of data security, but in numerous cases, individuals trusted with access to confidential data are actually the source of leaks—Chelsea Manning and Reality Leigh Winner come to mind. How should the SEC control access to CAT data within the agency? Should it allow other agencies or researchers access to CAT data?

A.4. I am concerned about both outside and inside compromises of the CAT data. My concerns stem in part from prior incidents at the SEC [1] and in part from the reality that mistakes happen even when people are well-intentioned. If I am confirmed, I will work with my fellow Commissioners and the SEC staff to understand the protections that are in place for dealing with CAT data, including who is entitled to access the data and how. Intergovernmental data sharing is important, but should be preceded by similar questions about who the agency will allow to access the information and how. If nongovernmental researchers are permitted to have access to the data, additional protections will be necessary, including eliminating PII. Before researcher permissions are granted, the SEC should carefully consider the purpose of allowing such access and whether it justifies the additional risk of leakage.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TILLIS FROM HESTER M. PEIRCE

Q.1. In brief, what is the SEC currently doing right, what needs to change, and how do you plan on prioritizing your time, should you be confirmed?

A.1. Chairman Clayton has set the SEC on the right course by laying out and taking initial steps with respect to important priorities, including facilitating capital formation, combating retail investor fraud, and better identifying and protecting against cybersecurity risks. To pursue these priorities, the SEC will need to shed some bad past habits, including a tendency to limit investor opportunities and unduly constrain access to the capital markets in the name of investor protection. The SEC should work to refocus disclo-

[1] See, e.g., Government Accountability Office, "Information Security: SEC Needs To Improve Controls Over Financial Systems and Data" (GAO Report No. 14-419 April 2014), at p.5 ("Although SEC had issued policies and implemented controls based on those policies, it did not consistently protect its network boundary from possible intrusions; identify and authenticate users; authorize access to resources; ensure that sensitive data are encrypted; audit and monitor actions taken on the commission's systems and network; and restrict physical access to sensitive assets."); Office of Inspector General, "SEC, Federal Information Security Management Act: Fiscal Year 2013 Evaluation" (Report No. 522 Mar. 31, 2014), at p.i (describing a number of areas in which previously identified weaknesses in security controls had not been corrected and thus "could adversely affect the confidentiality, integrity, and availability of the agency's information and information systems"); Office of Inspector General, "SEC, Report of Investigation into Misuse of Resources and Violations of Information Technology Securities Policies Within the Division of Trading and Markets" (Case No. OIG-557 Aug. 30, 2012), p.11 (in an investigation of security breaches in the Automation Review Policy Program (ARP), the SEC office charged with overseeing computer networks at self-regulatory organizations, finding that "staff spent hundreds of thousands of dollars on computer equipment and software that had no checks in place to ensure that the equipment and software purchased were needed or used to further the ARP program mission" and that "a significant portion of the equipment and software purchased was never used in the ARP program").

sure requirements so that companies are providing the material information that investors need to make informed investment decisions. The SEC also should work to modernize its rulebook, which—after more than 80 years—has grown fat and unwieldy.

If I am confirmed, I will work with the Chairman to improve capital formation, expand investor opportunities, combat retail fraud, strengthen cybersecurity risk management, and tend to the day-to-day business of the SEC. I expect my priorities to include bread and butter issues like EDGAR, the efficacy of the SEC's compliance and enforcement programs, oversight of FINRA and the PCAOB, and consideration of potential changes to the rules governing retail financial professionals and the rules governing market structure. As I noted at the hearing, if I am confirmed, my priorities may change in response to market changes or information I learn from my fellow Commissioners or the SEC staff.

Q.2. Do you believe that private capital being put into underperforming companies can improve the company's performance?

A.2. Private capital, along with the expertise that often accompanies it, can play an important role in assisting underperforming companies.

Q.3. Do you believe that curbing more private investment would help underperforming companies?

A.3. Unwarranted restrictions on the ability of companies to raise capital in the private markets diminish the likelihood that companies will survive and thrive. An effective regulatory framework can help to ensure that companies have access to a healthy supply of private capital and the managerial and operational expertise that goes along with it.

Q.4. Do you agree that private capital being put into companies leads to more transparency and communications with existing shareholders?

A.4. Private providers of capital can and often do condition their provision of capital on the institution of best practices regarding transparency and shareholder communications.

Q.5. Do you agree that corporate CEOs are more responsive to the market today than they were in the past?

A.5. Among other things, the proliferation of real-time information about companies, the increasing speed with which that information is incorporated into market prices, and compensation plans linking CEO pay to company performance likely have increased corporate CEOs' responsiveness to the market.

Q.6. Do you believe that restricting or making it harder for private capital to invest in American companies is a good idea?

A.6. Placing unwarranted restrictions on the ability of American companies to access private capital is not a good idea from the perspective of those companies, investors, and the general public. Along with our public markets, private markets are an important source of capital for companies of all sizes. If I am confirmed, I plan to work to help both private and public markets function effectively to help support the dynamism of American companies, the health of the American economy, and the prosperity of American employees and investors.

Q.7. Do you believe that private capital should be flexible and adaptive to quickly changing circumstances?

A.7. Private capital should be flexible and adaptive to quickly changing circumstances. One of the important features of well-functioning capital markets is that providers of capital are able to react rapidly to developments at particular companies and in the broader economy. A proper regulatory framework can facilitate such flexibility.

Q.8. Do you think that the current IPO market is at its peak? What could we be doing to facilitate more entrants into the public markets? What are some determinative factors that companies evaluate when making a decision to enter into the public markets? Do you think that some of these factors have served as preclusive, often determinative factors for a company deciding not to enter the public marketplace? How do public companies affect job creation and economic growth?

A.8. Whether the IPO market is at its peak depends on a number of factors, including general economic conditions, the reasonableness of the existing and prospective regulatory framework governing public companies, expectations about the cost of shareholder litigation, and the degree to which public capital is cheaper than private capital. In deciding whether to go public, companies consider these factors along with their own current need for capital, expectations about future growth, and an assessment of the prospects for enhanced stock liquidity. If companies determine that the cost of being public, including anticipated costs due to future regulatory changes, outweighs the benefits of easier access to capital and greater liquidity for shareholders, companies will not take the step of going public. Reluctance of companies to go public has serious implications for our economy, investors, and workers. Ready access to capital markets enables companies to obtain the capital they need to innovate, hire workers, and contribute to economic growth.

While some factors that affect the decision to go public are beyond the control of regulators and legislators, the SEC and Congress can take further steps to streamline the process for going public, eliminate requirements that do not protect investors, address concerns about market structure to ensure that the markets work for issuers of all sizes, and commit to a reasonable, effective regulatory regime for public companies.

Q.9. Do you think that the SEC should have a formalized retrospective review process, much like prudential regulators have, by which the SEC can take a holistic look at its rules and regulations and decide which ones are outmoded, ineffective, burdensome, etc., or similarly decide which ones need to be changed and modernized?

A.9. Retrospective review is an important part of maintaining an effective regulatory framework. If I am confirmed, I would be pleased to work with Congress to develop a statutory retrospective review process similar to that of the prudential regulators, but the SEC already has the ability to develop an effective process internally. The SEC has shown an increasing commitment to economic analysis, and retrospective review should be part of that commitment. As part of ongoing efforts to further improve economic analysis, the SEC could make a practice of including metrics in its rules that can serve as the basis for future retrospective review. Moreover, the SEC's plan to revisit Regulation NMS, among other rulemakings, will help to set an agency precedent for retrospective review.

Q.10. How do you plan on working with the CFTC to address harmonization issues?

A.10. Harmonization efforts by the SEC and CFTC in the derivatives markets are important. Domestic harmonization, in turn, will facilitate better international cooperation. SEC–CFTC relations have not always been smooth, but Chairmen Clayton and Giancarlo have exhibited an interest in building interagency cooperation. If I am confirmed, I look forward to working with the CFTC to harmonize rules governing swaps and security-based swaps, efficiently oversee dually registered entities, monitor the markets, and develop effective regulatory frameworks for new technologies that potentially implicate both regulatory regimes. I already have the pleasure of knowing Chairman Giancarlo, Commissioner Quintenz, and CFTC nominee Stump and look forward to getting to know Commissioner Behnam.

Q.11. With regard to cyber infrastructure and enforcement actions, what do you think the SEC is doing right and what would you change?

A.11. Chairman Clayton appropriately has expressed a strong commitment to cybersecurity at the SEC and in regulated entities and public companies. His early, public prioritization of this issue sent an important message to regulated entities and public companies. If confirmed, I will be better able to assess what the SEC is doing in terms of cyber enforcement. The SEC should create a collaborative environment to facilitate efforts by the private sector, the SEC, and other Government agencies to identify and address cyberthreats. If the SEC fails to address its own problems in cybersecurity, I am concerned that regulated entities will likewise cut corners.

Q.12. The Treasury Capital Markets report touched on potential changes to best execution and potential changes to market structure issues, particularly in the context of Reg. NMS. Can you give me your thoughts on what you view as potential areas for reform within the context of Reg. NMS?

A.12. Regulation NMS attempted to reshape the equity markets according to a particular view of how those markets should work. In doing so, the SEC more deeply entrenched itself in decision making, constrained the options of issuers and investors, and added new layers of complexity to the markets. Potential reforms could make it easier for trading venues to tailor themselves to meet the needs of particular issuers or investors, rather than the current one-size-fits-all approach. If confirmed, I look forward to working with my fellow Commissioners, SEC staff, the Equity Market Structure Advisory Committee, and this Committee to identify ways in which market structure regulation is not working and consider potential reforms to ensure that our markets serve the full range of investors and companies.

Q.13. Some have argued that our market structure systems have become increasingly complex and that the layered regulations have created incentives to game the system. Can you help me understand your views on reforming our domestic market structure and can you commit to this body that you will work with the Committee in tackling some of the languishing issues that have been pervasive in market structure over the last 10+ years?

A.13. Our equity markets are the best in the world, but reforms would help to ensure that they stay that way. Mindful of the fact that the Chairman sets the rulemaking agenda, I look forward to working on such reforms with my fellow Commissioners and with this Committee. I share your concern about the system's complexity and the gaming such complexity breeds. I also am concerned about the role that SEC regulation plays in determining how, where, and when orders are executed. Many problems we see in today's markets seem to have their origin in well-intentioned SEC attempts to structure the markets. In contemplating reforms, the needs of investors and companies should dictate.

Q.14. IT modernization enables financial services firms to protect constituent financial information. In an environment of increasing cybersecurity threats, how will you use your role at the SEC to promote IT modernization across the financial services sector and at the SEC?

A.14. If I am confirmed, I will work with Chairman Clayton, my fellow Commissioners, and the SEC staff to understand and address weaknesses in the SEC's information technology infrastructure, policies, and practices. Getting the SEC's house in order will send an important message to financial firms to do the same. The SEC's compliance examiners also play an important role in monitoring how financial firms are doing and where weaknesses may lie. If confirmed, I look forward to working with the SEC staff to ensure that the oversight program fosters healthy IT modernization practices.

Q.15. How will you ensure that regulations set by the SEC do not impede progress on IT modernization?

A.15. IT-intensive regulatory initiatives such as Regulation NMS, the Volcker Rule, and the Department of Labor's fiduciary rule likely divert industry resources away from IT modernization initiatives. I plan to take such opportunity costs into account in assessing future regulatory changes. In addition, it is important for the SEC to write rules in a way that ensures regulated entities have the flexibility to shift to newer and better ways of doing things. In the past, SEC rules have sometimes inadvertently cemented historical information technology by being overly prescriptive.

Q.16. With regard to corporate disclosures, what standard should be used to determine whether or not something is disclosed?

A.16. The appropriate standard for corporate disclosure is materiality. Corporations should disclose information "if there is a substantial likelihood that a reasonable shareholder would consider it important" in making an investment decision.[1] That standard avoids "bury[ing] the shareholders in an avalanche of trivial information."[2]

Q.17. On February 24, 2017, President Trump signed an Executive Order on Enforcing the Regulatory Reform Agenda, part of which focused on identifying regulations that are "outdated, unnecessary, and ineffective." Given recent technological advances, one area of particular focus should be regulations requiring paper-based communications as the default delivery method in communicating with investors and consumers. Such regulations are prime examples of regulations that were first adopted decades ago and have failed to evolve with the times.

If confirmed, will you work to ensure that the SEC identifies and modifies outdated regulations regarding paper-based communications?

A.17. If confirmed, I will work to eliminate or modernize outdated regulations. Without prejudging the issue about paper-based communications, the subject of an outstanding proposal, I intend to work to ensure that technology can be used appropriately and consistent with investor protection to meet disclosure requirements.

Q.18 Do you believe the recent action by the SEC regarding MiFID II was appropriate? If you do not, how would you have addressed this issue?

A.18. While I have not had the opportunity to consult with the staff that worked on the MiFID II resolution, I was pleased to see that the SEC took concrete steps to provide guidance and legal clarity on a matter of such importance. If I am confirmed, I look forward to working with my fellow Commissioners, the SEC staff, and international counterparts on a longer-term resolution, should it be necessary.

Q.19. Do you think that the U.S. and the SEC should import standards from other countries?

A.19. The SEC should draw lessons from other countries' regulatory successes and failures, but the SEC needs to develop regulations that work for the American markets. Moreover, wholesale importation of foreign standards does not comport with the Administrative Procedure Act.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM HESTER M. PEIRCE

Q.1. A preliminary report released this week found the SEC collected $127 million in corporate civil penalties in 15 cases from February through September 2017, in comparison to $702 million in 43 cases from February through September 2016.[1]

Are you concerned that these numbers may reflect a shift in enforcement priorities?

[1] TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).
[2] Id. at 448.
[1] *https://www.politicopro.com/financial-services/story/2017/10/corporate-penalties-have-dropped-at-sec-since-trump-took-office-163857*

A.1. I am committed to a strong enforcement program—one that sends a clear message that rules will be enforced impartially, swiftly, objectively, and fairly. It is, however, very difficult to assess the effectiveness and priorities of the SEC's enforcement program by looking only at a single statistic, such as the number of cases in which corporate penalties were assessed or the amount of penalties. The nature and complexity of cases are also important, and these factors might not reflect a shift in enforcement priorities. For example, an enforcement action that stops a retail fraudster in her tracks before she can harm a lot of investors is an important matter, but might yield relatively small penalties.

Q.2. If confirmed, what recommendations will you make to Chair Clayton to strengthen the ability of the enforcement division to hold accountable those that violate Federal securities laws?

A.2. If confirmed, I will recommend that Chairman Clayton empower the Enforcement Division to pursue enforcement matters—regardless of whether they generate big headlines—that go to the core of investor protection and market integrity. Retail and accounting fraud matters can be difficult to investigate, but are important. I also will recommend that the Chairman not allow routine compliance matters to take valuable enforcement resources away from pursuing intentional violations. I also will work with the Chairman foster a culture within the SEC that encourages staff to raise concerns and suggest changes. Because much of the enforcement work is conducted outside Washington, DC, I will also recommend that Chairman Clayton build strong relationships with the regional offices to ensure that all of the agency's enforcement resources are being used productively.

Q.3. In response to a question from Chairman Crapo, you identified cybersecurity as a top priority. If confirmed, what recommendations will you make to Chair Clayton related to cybersecurity both at the Commission itself and in the securities markets at large?

A.3. Cybersecurity must be an SEC priority. The recently revealed breach at the SEC is a stark reminder that the SEC has valuable, personally and commercially sensitive information. Unfortunately, this last breach was not the SEC's first problem in the cybersecurity area. As indicated by Chairman Clayton's September 20, 2017, public statement on cybersecurity, he takes these issues extremely seriously. I will support the Chairman's efforts, including by recommending that the SEC act more quickly than it has in the past to implement recommendations by the SEC's Inspector General and the Government Accountability Office to address cybersecurity weaknesses. To be able to do this, the SEC will need to recruit and retain information security experts. The establishment of a culture at the SEC that encourages employees at all levels to be on the lookout for problems can help to ensure that problems are identified and elevated promptly within the SEC.

As you note, cybersecurity is an issue not just for the SEC, but for the securities markets as a whole. By taking aggressive action to address its own problems, the SEC can set a powerful example for the securities markets. I also will recommend that the Chairman work collaboratively with regulated entities and other regulators to identify and combat cyberthreats.

Q.4. In response to a question from Senator Reed regarding resources and cybersecurity, you said "it will be much easier to assess that [resources] when I am actually there." I am concerned that the SEC does not have the resources it needs to appropriately protect itself from cybersecurity threats.

What specific steps will you take to investigate whether the SEC has sufficient cybersecurity resources?

A.4. If I am confirmed, I will talk with the Chairman, my fellow Commissioners, and staff in the Office of Information Technology to understand what resources are devoted to cybersecurity now, how cybersecurity resources have been used in the past, and what projected needs are for the future. Past reports suggest that some of the SEC's problems may be due to mismanagement of resources, [2] so I would want to understand whether resource management has improved since the period covered by those reports. An objective outside analysis of the SEC's cybersecurity infrastructure could be useful in understanding what the SEC's resource needs might be in coming years. I also hope to get a better understanding of how other similarly situated agencies are managing cybersecurity threats.

Q.5. If you conclude that the SEC does not have sufficient cybersecurity resources, will you make that finding clear to both Chair Clayton and Members of Congress?

A.5. Yes.

Q.6. I remain concerned that the current lack of transparency around short selling enables manipulative trading behaviors that harm growing companies and discourages long-term investment. I raised this concern to former SEC Chair Mary Jo White in a letter in January 2017. In my view, the current lack of transparency of short positions has a trifold impact on the securities market—it deprives investors of information critical to making meaningful investment decisions; it denies issuers of insights into trading activity and inhibits their ability to interface with investors; and it withholds crucial information from the market, ultimately impeding efficiencies and diluting transparency. There are currently two petitions for rulemaking pending before the SEC requesting that it promulgate rules to require disclosure of short positions in parity with the existing required disclosure of long positions (File No. 4-

[2] See, e.g., Government Accountability Office, "Information Security: SEC Needs To Improve Controls Over Financial Systems and Data" (GAO Report No. 14-419 April 2014), at p.5 ("Although SEC had issued policies and implemented controls based on those policies, it did not consistently protect its network boundary from possible intrusions; identify and authenticate users; authorize access to resources; ensure that sensitive data are encrypted; audit and monitor actions taken on the commission's systems and network; and restrict physical access to sensitive assets."); Office of Inspector General, "SEC, Federal Information Security Management Act: Fiscal Year 2013 Evaluation" (Report No. 522 Mar. 31, 2014), at p.i (describing a number of areas in which previously identified weaknesses in security controls had not been corrected and thus "could adversely affect the confidentiality, integrity, and availability of the agency's information and information systems"); Office of Inspector General, "SEC, Report of Investigation into Misuse of Resources and Violations of Information Technology Securities Policies Within the Division of Trading and Markets" (Case No. OIG-557 Aug. 30, 2012), p.11 (in an investigation of security breaches in the Automation Review Policy Program (ARP), the SEC office charged with overseeing computer networks at self-regulatory organizations, finding that "staff spent hundreds of thousands of dollars on computer equipment and software that had no checks in place to ensure that the equipment and software purchased were needed or used to further the ARP program mission" and that "a significant portion of the equipment and software purchased was never used in the ARP program").

689 and File No. 4-691). In your opinion, should the SEC act on these pending rulemaking petitions or consider any alternative options, in order ensure fair disclosure of short positions?

A.6. To avoid pre-judging the issue, I cannot speak to the particular petitions. If I am confirmed, however, I look forward to working with my fellow Commissioners and SEC staff to assess transparency concerns associated with short selling and potential avenues for addressing those concerns without unduly curtailing socially beneficial short selling.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARNER FROM HESTER M. PEIRCE

Q.1. The Citizens United v. FEC ruling allowed, among other things, corporations to contribute independent political expenditures. Public companies are active participants in our elections, yet their shareholders do not know the role that they play because the SEC has been reluctant or handcuffed from requiring firms to disclose their political contributions.

Do you believe shareholders have a right to know whether a company they've invested in is making contributions in their best interest?

A.1. I understand that some shareholders and other interested persons have expressed an interest in corporate political contributions. Under current securities law, however, companies are not required to disclose information regarding political contributions unless that information is material.

Q.2. What should be the threshold for determining when a company discloses their political spending?

A.2. Materiality is the appropriate standard for all corporate disclosures. Companies should disclose political contributions that are important to a reasonable investor's investment decision.

Q.3. What policy levers does the SEC have to promote long-term value creation?

A.3. The SEC has several policy levers relevant to long-term value creation. Adjustments to the regulatory framework governing capital formation can ensure that innovative and growing companies can obtain the capital they need to create long-term value. The SEC's disclosure regime can promote long-term value creation by providing investors the information they need to assess companies' long-term value. Adjustments to the regulatory regime governing market structure can ensure liquid markets for the shares of companies of all sizes, which in turn helps those companies to attract investors and build long-term value.

Q.4. Do you believe companies are engaging in too many stock buybacks and dividend payments and not spending enough on corporate growth?

A.4. I share a desire to see corporate growth, but assessing whether there are too many buyouts and dividends would require a case-by-case, fact-specific assessment. Manipulative buyouts, of course, should not occur at all. Buybacks and dividends, if properly and legally used, can contribute to corporate growth. For example, a company without productive uses for cash might conclude that it should return cash to shareholders through a stock buyback or dividend. The shareholders can then invest that money in companies with productive uses for it. Other companies might contribute to corporate growth by choosing to refrain from buybacks and dividends in order to invest in new projects.

Q.5. Is there a way to center less attention on quarterly earnings?

A.5. Some market participants and companies cite quarterly earnings pressure as a reason that companies cannot focus on long-term value. I am aware of some private sector efforts to find ways for companies to expressly embrace a long-term view. If confirmed, I look forward to working with my fellow Commissioners and SEC staff to consider whether regulatory or statutory changes are necessary and appropriate to allow such efforts to move forward.

Q.6. The disclosure of innumerable hacks over the past few years, recently punctuated by hacks of the SEC and Equifax, has made clear that we all need to raise our cybersecurity game. Given the important role broker-dealers play in the formation and distribution of capital in the United States, do you think it's appropriate for FINRA, in its examination of broker dealers, to perform cyber-vulnerability assessments of registered broker dealers?

A.6. Broker-dealers' cybersecurity is an important matter given their central role in the capital markets. FINRA looks at registered broker-dealers' cybersecurity policies, practices, and risk management. If confirmed, I look forward to working with my fellow Commissioners, the SEC's FINRA inspection office, and FINRA to understand the scope of FINRA's existing cyber assessments and whether additional oversight of broker-dealers' cyber vulnerabilities by FINRA or the SEC is necessary.

Q.7. On Oct. 15, 2014, the Treasury market flash rally occurred, where the yield on the benchmark 10-year U.S. Treasury traded in a 37-basis-point range (0.37 percent), only to close six basis points below its opening level. Principal trading firms (PTFs) account for a majority of trading in inter-dealer Treasury markets, which represent half of all trading in Treasuries. Due to a loophole, PTFs, including many that use algorithmic strategies, have not been required to register as brokers. This allows them to escape oversight and reporting requirements. Will you commit to ensuring that PTFs are required to register as brokers?

A.7. If confirmed, I will consult with my fellow Commissioners, SEC staff, and the Department of Treasury to consider whether, in light of recent market developments, a rulemaking to extend broker-dealer registration and reporting requirements to principal trading firms in the Treasury markets is appropriate.

Q.8. Under current law, Regulation ATS's basic regulatory standards for exchanges and other financial markets are designed to ensure market resilience, integrity and adequate operational risk controls. But trading venues that facilitate the exchange of Government securities are excluded from Regulation ATS. And by excluding them from Regulation ATS, they are also excluded from Regulation SCI's cybersecurity requirements. Will you commit to closing the loophole that permits Government-securities trading venues to avoid these basic requirements?

A.8. It is crucial that our Government securities markets function well and are resilient. The SEC's 2015 proposal on Regulation ATS asked for comment on whether regulatory changes are appropriate for Government-securities trading venues If confirmed, this issue may come before me in connection with the adoption of changes to Regulation ATS. In considering the appropriate regulatory framework (including cybersecurity requirements) for Government-securities trading venues, I will review relevant comments and consult with my fellow Commissioners, SEC staff, the Department of Treasury, and banking regulators.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM HESTER M. PEIRCE

Q.1. You have written extensively on the problems at the Financial Industry Regulatory Authority (FINRA). You previously said that you're "not sure that FINRA serves anyone well in its current form," and that "investors feel they're not getting the protection they need."[1] And yet, despite the SEC having the tools to oversee it, "in practice FINRA operates with substantial independence from the SEC."[2] As you put it, "FINRA rules do not typically attract close attention from the SEC's commissioners."[3]

Given your statements on FINRA and the lack of oversight from the SEC, can you commit to reversing that trend and conducting formal reviews of all FINRA actions going forward?

A.1. As you note, I have concerns about FINRA's accountability. If I am confirmed, therefore, I will actively review FINRA actions.

Q.2. Will you commit to initiating a review of FINRA's investor protection practices?

A.2. Investor protection is central to FINRA's role. I look forward to working with my fellow Commissioners and SEC staff to review FINRA's investor protection practices.

Q.3. At your hearing, you stated that you "worry about transparency" at FINRA.[4] FINRA meets behind closed doors and is not required to release information to the public unless it deems it necessary. FINRA is not subject to the Freedom of Information Act, its hearings are not public, and "there is virtually no public information currently available about how FINRA specifically uses [its] revenues[.]"[5]

Do you think FINRA should be subject to the same transparency and due process requirements that Government agencies are sub-

---

[1] "FINRA Plays 'Gotcha' With Brokers, Short-Changes Investors: Hester Peirce", *Think Advisor* (Mar. 17, 2017) (online at *http://www.thinkadvisor.com/2017/03/17/finra-plays-gotcha-with-brokers-short-changes-inve?slreturn=1509052996*).

[2] Hester Peirce, "The Financial Industry Regulatory Authority: Not Self-Regulation After All", *Mercatus Center* 19 (Jan. 2015) (available at *https://www.mercatus.org/system/files/Peirce-FINRA.pdf*).

[3] Id.

[4] Greg Iacurci, "SEC Nominees Jackson and Peirce Blast FINRA's Transparency During Hearing", *Investment News* (Oct. 24, 2017) (online at *http://www.investmentnews.com/article/20171024/FREE/171029976/sec-nominees-jackson-and-peirce-blast-finras-transparency-during*).

[5] Mark Schoeff, Jr., and Bruce Kelly, "FINRA: Who's Watching the Watchdog?": *Investment News* (Sept. 2, 2017) (online at *http://www.investmentnews.com/article/20170902/FEATURE/170909996/finra-whos-watching-the-watchdog*).

ject to? If not, which requirements should and should not apply to FINRA?

A.3. Self-regulatory organizations (SROs) have traditionally not been subject to the same transparency and due process requirements as Government agencies. Given FINRA's quasi-governmental nature, I and others have asked whether FINRA's transparency and due process requirements should look more like those applicable to Government agencies. I have not reached a definitive conclusion on how FINRA's transparency and due process requirements should be reformed. As I mentioned at the hearing, I am hopeful that some positive change may come from within FINRA in response to the review that CEO Robert Cook initiated. If I am confirmed, I look forward to exploring with my fellow Commissioners, SEC staff, Members of this Committee, investors, member firms, and other interested parties whether the SEC or Congress also need to act to increase transparency and procedural protections at FINRA.

Q.4. If confirmed, will you review transparency and due process at FINRA? If necessary, will you work with both your fellow Commissioners and the Congress to reform FINRA?

A.4. If confirmed, I intend to work with my fellow Commissioners and the SEC staff to look at transparency and due process at FINRA. If necessary, I will work with my fellow Commissioners and Congress on reforming FINRA.

Q.5. Despite refusing to disclose most of their finances, FINRA pays it several of its seven of its executives more than $1 million per year. Given its failure to protect investors, do you think it is appropriate for FINRA to pay its executives several times more than typical Government regulators?

A.5. I am aware of concerns about the high salaries of FINRA executives, particularly because these salaries are paid by broker-dealers and, ultimately, investors who have little input in setting them. The SEC is not in a position to set salaries at FINRA, but, should I be confirmed, I will work to hold FINRA accountable for how well it is fulfilling its role as the frontline regulator of broker-dealers. A piece of this consideration is likely to be how effectively FINRA is spending its resources.

Q.6. On June 1, 2017, the SEC solicited public comments from retail investors and other interested parties on revising its standards of conduct for investment advisers and broker-dealers. In this request for comments the SEC asked "If the commission were to proceed with a disclosure-based approach to potential regulator action, what should that be?"[6]

Do you believe that the financial incentives that create conflicts of interest in the retail investment market that harm investors can be eliminated by enhanced disclosure alone?

A.6. A key part of investor protection is ensuring that investors have access to the information they need to make investment deci-

[6] Jay Clayton, "Public Comments From Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers", Securities and Exchange Commission (June 1, 2017) (online at *https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31*).

sions, including decisions about working with a financial professional. Disclosing conflicts of interest can help investors to choose an appropriate financial professional, even if some conflicts remain.

Q.7. If not, what steps will you take to directly tackle problematic incentives that lead to conflicts of interest that harm investors?

A.7. As you noted, Chairman Clayton recently sought comment from retail investors and others about revising the standards of conduct for financial professionals. I look forward to reviewing these comments, working with my fellow Commissioners and SEC staff in the Divisions of Investment Management and Trading and Markets, and consulting with the Department of Labor, the SEC's Investor Advocate, the Investor Advisory Committee, and State regulators to consider whether regulatory changes are needed and what those changes should look like. Among other issues that I will consider are the role that incentives play in the provision of retail financial services.

Q.8. If so, how do you design a disclosure regime that eliminates problematic financial incentives?

A.8. If I am confirmed, until I have consulted with my fellow Commissioners, relevant staff, the Investor Advisory Committee, the Department of Labor, State regulators, and other interested parties, I cannot commit to supporting a particular regulatory approach in this area.

Q.9. If the commission proceeds with a disclosure-based approach to potential regulator action, what user tests will the commission conduct to prove that all investors, not just the most sophisticated, fully understand and appreciate the nature and extent of the conflicts of interest and make a truly informed decision as a result?

A.9. As your question suggests, investor testing can be an important tool for the SEC in designing disclosures so that retail investors are able to understand them and readily find in them the information that is critical to making good investment decisions. If confirmed, I look forward to drawing on the work the Office of the Investor Advocate's Policy Oriented Stakeholder and Investor Testing for Innovative and Effective Regulation (POSITIER) initiative. The empirical research produced and aggregated as part of this initiative is likely to be relevant to rulemaking efforts regarding the provision of retail financial products and services and many other SEC rulemaking initiatives. The research also will help the Commission to explore how different types of investors understand and respond to disclosures and how other types of regulation affect investors.

Q.10. Will you consult the extensive economic analysis the Department of Labor put together for their rulemaking on the fiduciary standard, including analysis on the incidence and cost of conflicts of interest in the financial services industry and on how these financial conflicts influence adviser recommendations?

A.10. If confirmed, as part of considering any potential rulemaking in this area, I will consult the Department of Labor's work in connection with its fiduciary rulemaking, including its economic analysis.

Q.11. What will you do to ensure that broker-dealers do not call themselves advisers? How can investors distinguish between sellers and advisers if sellers are allowed to call and market themselves as advisers?

A.11. I am aware of concerns that the use of the "adviser" title by broker-dealers is a source of investor confusion. If I am confirmed, I look forward to working with my fellow Commissioners and the SEC staff to consider how this source of confusion can best be addressed.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR DONNELLY FROM HESTER M. PEIRCE

Q.1. In previous conversations with Mr. Jackson and Ms. Peirce, we have discussed my concerns that the wave of stock buybacks in recent years has been at the expense of the long-term health of companies, their workers, and their communities.

Are you concerned that the increase of stock buybacks in recent years has been at the expense of investments in American workers?

A.1. I share your desire to see companies investing in American workers, and the SEC should monitor stock buybacks. To the extent that a company is repurchasing its shares to return cash that it cannot productively use, buybacks can drive funds to companies that are eager to hire workers. One important way the SEC can help to protect American workers is to ensure that companies of all sizes can raise money in our capital markets, which they can then use to hire workers, expand production, and invest in research and development. If capital markets are healthy, share buybacks may occur less frequently and any associated layoffs will take less of a human toll as new and expanding companies will have the funds to hire laid-off workers.

Q.2. What actions can or should the SEC take to better monitor stock buybacks and to increase transparency? What about requiring more immediate disclosure (as opposed to quarterly, as currently required)?

A.2. Particularly given the large number of stock buybacks in recent years, the SEC should monitor stock buyback activity for compliance with the safe harbor conditions of rule 10b-18, if relevant, and to ensure that repurchases are not fraudulent or manipulative. If confirmed, I look forward to consulting with my fellow Commissioners and SEC staff regarding whether the current disclosure about stock buybacks is adequately meeting investors' needs or whether more frequent disclosure would be appropriate.

Q.3. Mr. Jackson, your written testimony includes this excerpt: "I will work to implement the corporate-governance protections that Congress has enshrined into law—so that investors, employees, and communities can be sure that our companies are working to produce the kind of long-term value creation that has been the hallmark of the American economy for generations." I agree that companies should produce long-term value creation, but unfortunately "short-termism" has become a disease; Wall Street pressure results in corporate management making decisions based on the next quarter as opposed to the next decade.

Ms. Peirce, do you share similar concerns about "corporate short-termism"? What actions can or should the SEC take to combat this problem and encourage long-term value creation?

A.3. I am aware that many market observers and market participants have expressed concern that short-termism is driving decisions that are not value-maximizing in the long-term. While I believe that market prices generally reflect the long-term value of companies, it is important to ensure that the capital markets work for investors and companies with a long-term focus. One way the SEC can do this is by ensuring that disclosures are focused on items material to issuers' long-term value. I look forward to exploring—with my fellow Commissioners, SEC staff, investors, issuers, and this Committee—additional regulatory and statutory changes that would make it easier for companies to explicitly and purposefully embrace a long-term approach.

Q.4. Mr. Jackson, in our meeting, I mentioned the Carrier layoffs and the heart-wrenching video where a corporate executive told hundreds of workers their jobs were going to Mexico. In response, I crafted the End Outsourcing Act to keep jobs in America by restricting tax breaks and Federal contracts for companies that ship jobs to foreign countries. It is difficult, however, to track when and where outsourcing occurs. I believe the SEC can take modest steps in this regard by requiring public corporations to disclose country-by-country employment. This would help investors determine which companies employ American workers and better understand where outsourcing has occurred.

To both witnesses, do you support requiring corporations to disclose employment on a country-by-country basis to help increase transparency of outsourcing and American employment?

A.4. I share your concern about the elimination of jobs in this country. The most important step the SEC can take to help to address this problem is to ensure that our capital markets are functioning properly so that we have a dynamic economy in which companies compete vigorously for workers all across this country. My assessment of an SEC mandate to disclose workers' locations, as with other disclosure requirements, would turn on its materiality. In addition, the details of how such a mandate is structured would be relevant to my decision of whether to support such a mandate. In considering such a mandate, I would want to consult with my fellow Commissioners and staff in the Division of Corporation Finance and Division of Economic and Risk Analysis.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCHATZ FROM HESTER M. PEIRCE

Q.1. I am very concerned about legislative proposals to dramatically increase the threshold for submitting shareholder proposals. Shareholder proposals are an important way for shareholders to communicate with management. They have been instrumental in improving corporate governance, such as requiring that independent directors make up at least a majority of corporate boards. Shareholders submit proposals on emerging risks, such as cybersecurity and consumer data protection.

I also worry that the SEC may respond to pressure from companies that do not like dealing with shareholder proposals and raise the threshold on its own.

Do you think shareholders should have a voice in the companies they own?

A.1. Shareholders should have a voice in the companies they own. Although most contours of shareholders' interactions with companies are governed by State law, the SEC's Division of Corporation Finance is actively engaged in the shareholder proposal process. The process can be costly to shareholders and the SEC. If, in light of these burdens, the SEC revisits shareholder proposal thresholds, that reconsideration must be undertaken with the benefit of the SEC staff's expertise and input from, interested parties, including the shareholders whom any changes would affect.

Q.2. Do you think it would a problem if the threshold for submitting proposals was set so high that it blocked all but the biggest and wealthiest shareholders from submitting proposals?

A.2. It is important that any changes in this area balance the beneficial role that shareholder proposals can play in informing companies of small and large shareholders' concerns with the costs that shareholder proposals can impose on nonproposing shareholders.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM HESTER M. PEIRCE

Q.1. If confirmed, what specific steps would you take to bolster individual executive accountability, consistent with what Chairman Clayton has advocated for?

A.1. Holding individuals accountable for their violations of the securities laws is a key part of protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation. If confirmed, I plan to explore with my fellow Commissioners and staff in the Division of Enforcement on a case-by-case basis whether the facts and law dictate that individuals should be charged instead of or in addition to corporations.

Q.2. Ms. Peirce, you worked at the SEC starting in 2002, and then for a Commissioner from June 2004 to August 2008. As you know, during that time, tremendous risk built up in the financial system. Large investment banks like Lehman Brothers and Bear Stearns accumulated hugely risky positions that went unchecked by the SEC. For example, the SEC's Inspector General in 2008 found eleven separate failings at the Commission related to Bear Stearns, including [1]:

- Allowing Bear Stearns' concentration in toxic mortgage-backed securities to surge past even the firm's internal limits;
- Allowing leverage to go virtually unchecked under what was known as the Consolidated Supervised Entity (CSE) program, a voluntary regulatory regime; and
- Allowing internal audit staff, rather than external auditors as required by SEC rules, to perform critical oversight work.

---

[1] *https://www.sec.gov/files/446-a.pdf*

Key regulators from that time period—from Christopher Cox at the SEC, to Hank Paulson, the Treasury Secretary, to Alan Greenspan, the past Fed Chair—have all acknowledged that voluntary supervision and industry "self-regulation" didn't work. Has your experience at the SEC during the build-up to the financial crisis made you look at the world any differently? If confirmed, how will you internalize the lessons of this time period and apply them to your new tenure at the SEC?

A.2. My experience at the SEC has made me look at the world differently. Being inside a regulatory agency allowed me to understand the breadth of the challenges that regulators face and the potential for regulatory mistakes to harm the markets, the economy, and individual Americans. The crisis taught me the importance of asking questions about trends in the market—why are firms engaging in a particular type of activity and what will happen if market conditions change? One of those important lessons from the crisis period is that well-intended regulations can have devastating unintended consequences.[2] A seemingly small change in the law can lead to dramatic changes in asset holdings and risk taking. Regulation can homogenize firms' risk profiles, which then causes widespread, uniform vulnerability to shocks to the financial system. Another important lesson that was all too evident during the financial crisis is that when firms are able to shift the consequences of poor risk management to taxpayers, they are less careful than they would be if they were responsible for their own mistakes. The crisis also taught lessons about the danger of Government-granted monopolies, such as the credit rating agencies.

If I were to be confirmed, these lessons would be at the front of my mind in crafting regulation and monitoring the market for potentially harmful activity. I will be cognizant of the interaction between regulation and industry decision-making and advocate for necessary modifications to rules to ensure that they are achieving their intended objectives without inserting new risks into the system.

Q.3. Ms. Peirce, you have, in your previous writing, dismissed the notion that some financial executives got off the hook for wrongdoing that occurred in the lead-up to the financial crisis.[3] You wrote, "lost in the blind bloodlust targeted at financial institutions and their employees is an appreciation for the complexity of many of the laws and regulations they face."[4] You also noted, "in my experience, Government attorneys don't need any encouragement—beyond the prospect of resume bling—to bring big cases."[5]

In my view, State and Federal prosecutors were often outgunned and outspent, and many times, executives would invoke systemic importance or "collateral consequences" as to why prosecutors

[2] See, e.g., Stephen Matteo Miller, "The Recourse Rule, Regulatory Arbitrage, and the Financial Crisis", (Mercatus Center at George Mason University Working Paper, Aug. 3, 2017).

[3] *https://www.usnews.com/debate-club/are-banks-becoming-too-big-to-jail/for-real-reform-we-must-move-past-too-big-to-jail-hype*

[4] Ibid

[5] Ibid

shouldn't bring cases. Do you still hold your view that the notion of "Too Big to Jail" was mere "hype?"[6]

A.3. No person or corporation—regardless of influence or market power—is above the law. Strong enforcement is a key part of ensuring the integrity of our securities markets. Financial institutions and their employees should be held responsible for violations of the law. Too often, however, the discussion around enforcement issues is not focused on facts and law, but on emotion. If I am confirmed, I will work to ensure that the SEC takes an objective approach to enforcement matters, fosters a culture of compliance with its rules, diligently and consistently punishes securities law violators, and uses its enforcement resources efficiently.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN FROM ROBERT J. JACKSON, JR.

Q.1. Although materiality has long been the foundation of the SEC's disclosure requirements, the SEC has, over time, supplemented this standard with specific bright-line rules. For example, the SEC requires disclosure of specified information related to executive compensation, corporate governance, and internal controls. Do you agree that bright-line rules can be useful to both companies and investors by supplementing the traditional materiality standard?

A.1. Yes. As I have previously written, the Commission's disclosure rules have consistently evolved over time in response to changing investor interests, market dynamics, and Congressional mandates. As your question points out, the Commission's rules regarding executive compensation, for example, were developed in response to significant investor interest in those matters.

It is an essential part of the SEC's task to ensure that the Commission's disclosure rules continue to evolve appropriately in order to make sure that investors have the information they need in order to evaluate the companies that they own. If confirmed, I will work with my fellow Commissioners and the Staff to ensure that these rules keep pace with investors' needs.

Q.2. Speaking at NYU's School of Law earlier this year, Chair Clayton said, "I am not comfortable that the American investing public understands the substantial risk that we face systemically from cyber issues and I would like to see better disclosure around that." Two days later, the Equifax breach proved him right.

If confirmed, would you commit to working with Chair Clayton and the other Commissioners to revise cyber risk disclosure requirements, including considering a specific 8-K reporting item for cybersecurity breaches that expose personally identifiable information?

A.2. Yes. Recent events have taught us that the threat that American investors and consumers face from cybersecurity breaches is far more serious than we might have imagined even just a few years ago.

---

[6] Ibid

Like Chairman Clayton, I am concerned that our disclosure rules, and in particular the rules governing current reports on Form 8-K, have not kept pace with these developments—and do not make clear to public companies the urgency of disclosures related to cybersecurity breaches. If confirmed, I will work with the Chair, my fellow Commissioners, and the Division of Corporation Finance to update these rules in a fashion that makes clear the importance of cybersecurity risk to public-company investors.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TOOMEY FROM ROBERT J. JACKSON, JR.

Q.1. It is my understanding that Initial Coin Offerings (ICOs) and crypto-currencies have raised billions thus far in 2017. This represents an exponential growth in recent years.

I was glad to see the SEC begin to closely examine this market, and I applaud the SEC for its recent issuance of the Investigative Report regarding the DAO. The Investigative Report was an important step in bringing some clarity to the ICO market in explaining how securities laws apply to ICOs depending on the "facts and circumstances."

Although the DAO report was helpful, I worry that a continued lack of clarity in ICO regulation will stifle innovation and, most importantly, leave investors at risk.

Should the SEC do more to bring clarity to the ICO market?

A.1. I share the concern that this rapidly growing market deserves immediate and close attention so that the SEC can help protect investors in this area. Like you, I was glad to see the SEC carefully examining the ICO market in its Investigative Report—and like you, I agree that the Investigative Report should only be the beginning of the SEC's work to protect investors in these markets.

As an outsider to the Commission, I cannot say what steps the SEC can or should take to bring more clarity to this market. I can say, however, that the Commission should consider whether its existing rules provide sufficient guidance regarding these markets and, if not, what further guidance can be provided without impeding the innovations that are occurring in this important area. If confirmed, I would work with the SEC's Staff, my fellow Commissioners, and this Committee to ensure that the SEC takes all of the steps necessary to protect the investors participating in the ICO market—and to ensure that the innovations that can help unite entrepreneurs with willing capital are encouraged rather than impeded.

Q.2. Aside from enforcement actions, what can the SEC do to provide certainty to the ICO market? Would a proposed rulemaking make sense?

A.2. Again, as an outsider to the Commission, it is difficult for me to say what particular steps the SEC should take to address the issues in this important new area. The Commission should, however, be considering whether the evidence the SEC currently has about the use of these offerings, the likelihood of fraud, and the potential for continued growth in this area suggests that a rulemaking is necessary to protect investors. If confirmed, I would look forward to working with my fellow Commissioners and Staff on more fully understanding ICOs' evolving place in our markets and whether and when a rulemaking would be appropriate.

Q.3. The SEC is about to implement the initial operating stage of the Consolidated Audit Trail (CAT). Exchanges will soon begin reporting to what will be a massive database, which will include a significant amount of highly sensitive information. In its second phase, CAT will begin receiving personally identifiable information (PII) of brokerage customers. The recent breach of the SEC's EDGAR database, however, calls into question the security of the SEC's information technology.

Will you commit not to collect any PII until you are confident that CAT is not susceptible to a breach?

A.3. The Consolidated Audit Trail was developed in order to make sure that the flash crash of 2010—a period of trading in which prices and volume swung uncontrollably, introducing volatility into markets around the world—never happens again. To do that, the SEC must have a detailed understanding of trading activity. That's why the CAT project is so important to the SEC's mission. To ensure fair and orderly markets, the Commission needs to know much more about trading patterns and the risks they might pose for our markets.

I absolutely share your concern that any breach of any SEC system, and in particular the CAT, would have significant consequences for the safety and stability of our capital markets. That's particularly true if such a breach were to occur after the CAT began to store PII of American investors. And that's why, during my hearing, I indicated that the SEC's own cybersecurity would be among my top priorities as a Commissioner.

Before coming to any conclusions regarding the CAT and its storage of PII, however, I would need more information regarding the years-long development of the CAT inside the SEC. In particular, I would need to better understand why the SEC's Staff concluded that having PII would be helpful in understanding the risks that gave rise to the flash crash—and what evidence and research might support that conclusion.

However, as we discussed during the hearing, I do wonder to what degree PII is necessary to fulfill the objectives of the CAT. I understand that the Staff has been working on this technology for a number of years, and if confirmed, I would seek to understand the rationale for the design decisions of the CAT—and how that design can both protect investors and any PII that the system collects.

Q.4. We usually think of outside hackers when we think of data security, but in numerous cases, individuals trusted with access to confidential data are actually the source of leaks—Chelsea Manning and Reality Leigh Winner come to mind. How should the SEC control access to CAT data within the agency? Should it allow other agencies or researchers access to CAT data?

A.4. I share your concern that losing control of CAT data—whether through an outside hacker or a Government leaker—is unacceptable. As I mentioned at my hearing, the security of the SEC's own data would be among my highest priorities as a Commissioner—for just that reason.

While I am familiar with the general specifications of the CAT, as an outsider I do not have sufficient information regarding the operational details of the system, including the internal controls and information-sharing policies that the Staff have already developed. If confirmed, I will work with the SEC's Staff and this Committee to gain deeper knowledge of what data will be gathered, analyzed, and stored as part of the CAT process—and make sure that any protocols governing sharing such information with outsiders serve the paramount goal of protecting information entrusted to the SEC.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SASSE FROM ROBERT J. JACKSON, JR.

Q.1. How can the SEC better define the scope of lawful trading-related activity defined in its rulemakings? Where is clarity most necessary?

A.1. As I mentioned during the hearing, Congress and the SEC should be working to be sure the law of insider trading is keeping pace with our markets. For two generations, American insider trading law has been developed by judges on a case-by-case basis. While there are benefits to this approach, there are downsides, too. One is that the law develops slowly—too slowly, some have argued, to keep pace with insider trading in today's markets.

With respect to an area in which clarity would be most helpful, recently courts have questioned the type of proof the Government must have with respect to the benefits an insider must receive in connection with leaks of material nonpublic information to traders.[1] Uncertainty with respect to such a fundamental question is, in my view, a serious problem. The SEC can and should frequently clarify its view of the meaning of the insider trading laws. The Commission has not updated those rules for nearly 20 years, and in my view it is time for the Commission to look at these matters again.[2]

Q.2. How can the SEC increase its use of informal guidance to provide better clarity about the scope of unlawful trading-related activities? Where is clarity most necessary?

A.2. There are a wide range of tools available to the SEC for making its view of insider-trading law clear to the markets. One, of course, is working with Congress to develop legislation that more clearly establishes the rules of trading in your own company's stock. Another—and one the SEC has used historically, but not recently—is to engage in formal rulemaking that clarifies the SEC's view of insider-trading law in light of recent developments in the courts.[3] Another, as your question notes, is by providing guidance

[1] Salman v. United States, No. 15-628, 137 S. Ct. 420 (2016); see also United States v. Martoma, 869 F.3d 58 (2d Cir. 2017).

[2] See Securities and Exchange Commission, supra note 6.

[3] See Securities and Exchange Commission, "Proposed Rules: Selective Disclosure and Insider Trading", Release Nos. 33-7787, 34-42259, IC-24209, 17 CFR §230 (January 10, 2000).

to companies and others regarding the SEC's expectations with respect to insider-trading activity.

My research has previously pointed to time periods, and especially the periods before major corporate announcements, where companies and insiders should consider prohibiting trading activity.[4] In this and other areas, companies could benefit from guidance from SEC Staff regarding the questions raised by insider-trading activity. This kind of clarity would help investors, companies, and insiders understand what the SEC expects of them when executives trade in their company's stock. If confirmed, I would look forward to working with the Staff and your office to ensure that market participants know what the law of insider trading requires—and can expect that law to be vigorously enforced.

Q.3. I'd like to learn more about your approach to securities regulations. Is there a risk that regulations can give large incumbent firms a competitive advantage over smaller farms? If so, what can be done to mitigate this risk?

A.3. Yes: there is always some risk that regulatory intervention can give large, incumbent firms an advantage over smaller firms, just as there is always risk that a failure by regulators to intervene might leave investors unprotected from fraud. Indeed, as an empirical scholar of law and economics, I have a deep appreciation for the fact that the laws and regulations we promulgate often have both intended and unintended effects—and that regulators must pay attention to both.

The best way to address this problem is for regulators developing new rules to pay careful attention to the needs of smaller businesses in developing those rules. That's why, if I am confirmed, I so look forward to helping to stand up the SEC's new Office of the Advocate for Small Business Capital Formation, which will better help Commissioners understand the perspective of smaller firms when developing new rules.

Q.4. Is it appropriate—in the words of former Chair Mary Jo White—to "effectuate social policy or political change through the SEC's powers of mandatory disclosure"?

A.4. Disclosure is at the heart of the SEC's mission to protect investors, and the Commission's disclosure rules have consistently evolved over time in response to changing investor interests, market dynamics, and Congressional mandates. In the remarks you refer to in your question, Chair White questioned whether certain mandates in the Dodd–Frank Act reflected an undesirable incorporation of "social policy" or "political change" into the securities laws.[5]

The SEC is an administrative agency, charged with enforcing and implementing the law that Congress and the President see fit to enact. It is not for particular Commissioners, even a Chair, to speculate about the motivations behind the statutory mandates that Congress has chosen. Regardless of a Commissioner's view of the wisdom of Dodd–Frank—or any law, for that matter—the

---

[4] Alma Cohen, Robert J. Jackson, Jr., and Joshua Mitts, "The 8-K Trading Gap" (Columbia Law and Economics Working Paper) (2015).

[5] Mary Jo White, Chairman, Securities and Exchange Commission, "The Importance of Independence" (Sommer Lecture at Fordham Law School) (Oct. 3, 2013).

SEC's obligation is to implement the will of the Congress. If confirmed, I intend to urge the Chairman and my fellow Commissioners to follow the law.

Q.5. Is there a danger that disclosure requirements become so voluminous that they become unhelpful to investors? If so, what can be done to avoid this problem?

A.5. Making information easier for investors to digest is an important part of the SEC's mission. But it's important to distinguish those efforts from simply reducing the amount of information available to investors. For generations, the Commission has followed Justice Brandeis's famous maxim that "sunlight is said to be the best disinfectant."[6] In my view, that rule has served investors well.

Nevertheless, a great deal can and should be done to make sure investors have the tools necessary to find the information they need to evaluate the companies they own. In particular, technology may allow us to rethink how we structure our disclosure regime in a way that ensures investors have better access to high-quality information without letting firms avoid disclosing inconvenient material facts.

In addition, in order to better structure disclosures in a way that serves investors, we need to learn more about how different types of investors—from smaller retail investors to large mutual funds and pension funds—consume the information that companies give them. A series of recent initiatives, including some led by the Office of the Investor Advocate, have begun to shed important light on those questions.[7] If confirmed, I would look forward to working with the Staff and my fellow Commissioners to better understand how investors consume the information companies give them. And I would look forward to working with your office to ensure that disclosures are as helpful to investors as possible.

Q.6. What role, if any, does the SEC have as a prudential regulator?

A.6. The SEC's primary regulatory priorities are set forth in the agency's principal enabling statutes. Those priorities include the protection of investors, the maintenance of fair and orderly markets, and to facilitate capital formation.

However, as we learned from the financial crisis—an event that devastated millions of American families and even today undermines investor confidence in our markets—modern financial institutions often cut across regulatory boundaries. When they do, gaps in regulatory oversight can have devastating consequences for our markets. For that reason, it's important for the SEC to engage, where appropriate, with prudential regulators such as the Federal Reserve Board of Governors, Federal Deposit Insurance Company, and Office of the Comptroller of the Currency. If confirmed, I would work with Chairman Clayton and those regulators to make sure that the kind of devastation American families suffered during the last financial crisis never happens again.

[6] Louis D. Brandeis, "Other People's Money—And How Bankers Use It", 22 (1914).

[7] See Securities and Exchange Commission Office of The Investor Advocate, "Core Functions" (2017) (describing the Office's efforts to assist retail investors and study investor behavior).

Q.7. Is it ever appropriate for the SEC to engage in the "merit review" of investment choices, where the SEC would elevate its evaluation of a particular investment over the evaluation of a private investor?

A.7. In general, the SEC has long eschewed reviewing the merits of any particular investment choice. For example, in 1979, the Commission famously declined to engage in reviewing the fairness of any particular going-private transaction.[8] Instead, in that case and many others, the Commission has relied on a disclosure-based regulatory framework that depends on investors and issuers to evaluate the merits of investment decisions. That approach has generally served the Commission, and our Nation, well.

But it's essential to that approach that the SEC's disclosure rules evolve in light of changing investor interests, market dynamics, and external events in order to make sure that these rules give investors the information they need to make their own judgments about the substantive merits of any particular investment choice. If confirmed, I intend to work with my fellow Commissioners and the Staff to ensure that our disclosure rules keep pace with investors' needs in order to best support the SEC's disclosure-based approach to securities regulation.

Q.8. In 2014, former SEC Commissioner Dan Gallagher said that "issues specific to small business capital formation too often remain on the proverbial back burner. This lack of attention doesn't just harm small business; it also harms investors and the public at large." Do you agree?

A.8. Yes. Congress and the SEC should always be thinking about how best to unite small businesses with the investors they need to grow their enterprises and our economy. Facilitating capital formation and the ability to access that capital has been one of the great catalysts of American entrepreneurship. Making sure that small businesses have a voice at the SEC is critical to the Commission's mission.

Q.9. How will you work to improve small business capital formation and respond to our economy's near-historic low levels of firm creation?

A.9. There are many explanations for recent changes in the number of public companies, and I think all of them are especially relevant to small businesses. For example, the capital-markets fees that a company must pay to go public are far higher in the United States than in other markets, giving entrepreneurs—and especially the kinds of small companies that lack market power over investment bankers—pause before listing their shares. And extensive acquisition activity over the past two decades has worked to combine thousands of public companies, reducing the number of listings on American exchanges, and putting smaller companies who choose to stay independent at a disadvantage. The SEC should consider all of these developments when examining how to make sure small

[8] See, e.g., Randal J. Brotherhood, Note, Rule 13e-3 and the "Going Private Dilemma: The SEC's Quest for a Substantive Fairness Doctrine", 58 *Wash. U.L.Q.* 883 (1980) (describing the SEC's initial proposal to have the Commission itself evaluate the substantive fairness of a going-private transaction, and the Commission's eventual decision to require only disclosure of the issuer's views regarding the fairness of such transactions).

business owners get the capital they need—and have incentives to create the companies that will power our economy for generations to come.

In addition, recent legislation, and especially the JOBS Act, has been directed toward ensuring that entrepreneurs have access to the capital they need. The SEC's rules related to JOBS Act mandates are still relatively new, however, and it is too soon to tell whether they are working—and how they might be improved to help small businesses grow and better protect investors.

The SEC will need to understand how markets and investors have responded to the JOBS Act before taking those steps. If confirmed, I would look forward to working with my fellow Commissioners and the Staff to make sure that the JOBS Act and related SEC rules do everything possible to unite entrepreneurs with the capital they need to grow our economy—while making sure investors are protected.

Q.10. The SEC Small Business Advocate Act of 2016 created the Office of the Advocate for Small Business Capital Formation. If confirmed, will you work closely with this advocate and seriously consider the Office's recommendations?

A.10. Yes. As I mentioned during the hearing, I think this Office will give small businesses a critical voice at the SEC, and if confirmed I will carefully consider its recommendations.

Q.11. The SEC Small Business Advocate Act of 2016 also created the Small Business Capital Formation Advisory Committee, which will issue recommendations on improving small business capital formation. Unfortunately, the SEC has traditionally largely ignored these sort of recommendations, such as those of the annual Government-Business Forum on Small Business Capital Formation. While the SEC is required to respond to the recommendations of the Advisory Committee, it is not required to follow them. If confirmed, will you strongly consider supporting the recommendations of the Advisory Committee?

A.11. Yes. The Commission's Advisory Committees should always play a critical role in Commissioners' deliberations. The reason is that those Committees often bring perspectives—whether experience as a shareholder, on the board of a public company, or running a broker-dealer entrusted with Americans' retirement savings—that Commissioners should consider before making any decisions.

Because my research and work has always emphasized the facts on the ground—the real effects that law has on investors and companies—I expect to give great weight to the recommendations of these Committees if I am confirmed. In particular, the Small Business Capital Formation Advisory Committee and its recommendations will provide invaluable insight into the needs and concerns of small and emerging companies seeking capital. If confirmed, I look forward to working with my fellow Commissioners and the Staff to make sure that these voices are heard.

Q.12. Does anything need to be done to improve the use of cost-benefit analysis at the SEC? If so, will you commit to advocating for these steps?

A.12. Yes. I believe that understanding the costs and benefits of any particular regulatory or deregulatory choice is critical to the SEC's mission. Common sense demands that policymakers do whatever they can to understand the implications of their policy choices before they make their decisions. And so does the law: the courts have made clear that the SEC has an obligation to analyze costs and benefits to the degree possible in connection with rulemakings.[9]

As I noted at the hearing, however, I believe it is equally important for policymakers to be candid and clear about the limits of cost-benefit analysis. All of the potential costs and consequences of a decision—in law and in life—simply cannot be known in advance, and that fact should not be used as a basis for the SEC to fail to fulfill its mission. As an empirical scholar of law and economics, I am very familiar with the benefits—and limits—of cost-benefit analysis. If confirmed, I look forward to working with the Division of Economic and Risk Analysis to better understand its approach to cost-benefit analysis and to ensure that such analysis continues to play an important role in the SEC's work.

Q.13. I'd like to discuss more about cybersecurity at the SEC. What—if anything—does the SEC need to do to improve its operational cybersecurity in light of recent events at the SEC?

A.13. I share the concern that recent news of a breach of the SEC's EDGAR system could reflect significant issues with the SEC's operational cybersecurity. Without understanding the facts behind that and other recent developments, I am not in a position to assess the current State of the SEC's cybersecurity.

However, as I mentioned at the hearing, if confirmed the SEC's cybersecurity would be among my highest priorities as a Commissioner. The Commission cannot fulfill its mission—nor can it expect public companies to take cybersecurity seriously—unless its operational cybersecurity is beyond reproach. If confirmed, I would look forward to working with my fellow Commissioners, the Staff, and Congress to make sure the SEC has the resources and subject-matter experts it needs to get this right.

Q.14. The Consolidated Audit Trail (CAT) has been called the "Fort Knox of Wall Street."[10] What value do you see in fully implementing the CAT?

A.14. The Consolidated Audit Trail was developed in order to make sure that the flash crash of 2010—a period of trading in which prices and volume swung uncontrollably, introducing volatility into markets around the world—never happens again. To do that, the SEC must have a detailed understanding of trading activity. That's why the CAT project is so important to the SEC's mission. To ensure stable and fair markets, the Commission needs to know much more about trading patterns and the risks they might pose for our markets.

The data that the CAT will make available to the SEC would help the Commission keep pace with the rapid changes in our markets. It will help us understand what caused the flash crash—and

[9] See, e.g., Bus. Roundtable v. SEC, 647 F.3d 1144 (D.C. Cir. 2011).
[10] Bob Pisani, "Here's What Really Terrifies Wall Street About the SEC Hack", CNBC.COM (Sep. 21, 2017).

how to prevent one in the future. In addition, combining these data with recent advances in data science will help both policymakers and private companies craft measures that will improve the functioning of markets. I look forward to working with my fellow Commissioners and the Staff on this important initiative.

Q.15. Are you worried that a breach of the CAT could compromise the confidential investment strategies of trading firms, particularly if the trade information could be reverse engineered or pose a broader systemic risk?

A.15. Yes. I am concerned that any breach of any SEC system, and in particular the CAT, would have significant consequences for the safety and stability of our capital markets.

As your question points out, one of those consequences might be the revelation of trading strategies with systemic consequences for our markets. Another unacceptable consequence could be that personally identifiable information (PII) might be compromised. That's why, during the hearing, I indicated that the SEC's own cybersecurity would be among my top priorities as a Commissioner. And that's why these questions will be among the first I will ask Chairman Clayton if I am confirmed.

Q.16. Should the SEC explore alternatives to maintaining PII in the CAT? For example, would the SEC be able to fulfill its policy aims by requesting PII from individuals only when it is necessary for the SEC to fulfill its oversight duties?

A.16. As an outsider it is difficult for me to know whether and why SEC Staff concluded that it was necessary for the CAT to collect PII. In particular, I cannot say why the Staff concluded that having PII would be helpful in understanding the risks that gave rise to the flash crash of 2010—and what evidence and research might support that conclusion.

However, as we discussed during the hearing, I do wonder to what degree PII is necessary to fulfill the objectives of the CAT. I understand that the Staff has been working on this technology for a number of years, and if confirmed, I would seek to understand the rationale for the design decisions of the CAT—and how that design can both protect investors and any PII that the system collects.

Q.17. In response to questions for the record from Senator Tillis during his confirmation process Chairman Clayton stated that ". . . we should be mindful that cybersecurity risks are continuously evolving, and regulation in this area should take into account its dynamic nature, including that, in such circumstances, specific requirements may be appropriate but also have the risk of becoming outdated . . . ." Do you agree? Is there a risk that Regulation SCI could create some cybersecurity risk by introducing an incentive for companies to focus more on complying with the regulation, instead of leveraging private sector resources to implement innovative cybersecurity techniques? If so, what steps should the SEC take to mitigate this risk?

A.17. Cybersecurity risks are a constantly evolving threat and pose a fundamental risk to our markets. That's why, at the hearing, I described addressing those risks as among my top few priorities if

I am confirmed as a Commissioner. And that's why I believe that the SEC should consider augmenting Regulation SCI in light of recent developments like Equifax. In particular, those changes should encourage exchanges to make the investments necessary to protect themselves and investors from the risk of a cybersecurity breach.

I am aware of the concern that certain parts of Regulation SCI might hinder exchanges from making use of the latest technologies to protect themselves from cyberthreats. As an outsider to the Commission and its work, I am not yet able to assess the evidence underlying that concern—and what the SEC might do about it. If confirmed, I look forward to learning more about the Staff's experience in administering Regulation SCI. And I would be delighted to work with you and your office to ensure that Regulation SCI gives exchanges the incentives they need to protect investors from cyberthreats.

Q.18. Some have proposed expanding the number of entities that should comply with Regulation SCI while others have proposed increasing transparency over which market centers are complying with Regulation SCI. What considerations would you take into account when evaluating this question?

A.18. Without commenting on any particular question that might come before me as a Commissioner if I am confirmed, I want to be clear about what will motivate me when addressing issues like these. When it comes to cybersecurity, my priority will be the protection of our investors and our markets from cyberthreats that undermine the stability and growth of our economy.

As an outsider to the Commission and its work, I cannot say whether expanding the reach of Regulation SCI or permitting widely-disclosed departures from those standards will achieve that goal in any particular case. To know the answer to that question, the SEC will need to study the risk to the broader economy of exchanges having inadequate cybersecurity defenses, the costs associated with exchanges adapting to new cybersecurity regulations, and especially the risks that consumers will face if firms handling sensitive personal data have lax cybersecurity protections. If confirmed, would I look forward to learning more about the Staff's experience on these questions. And I would look forward to working with you and your office to make sure investors and markets are protected from cybersecurity threats.

Q.19. Should the SEC update its cybersecurity disclosure guidelines for public companies?

A.19. Yes. I agree with Chairman Clayton that cybersecurity is an area where there is not enough disclosure. I'm particularly concerned that the rules governing current reports on Form 8-K have not kept pace with these developments—and do not make clear to public companies the urgency of disclosures related to cybersecurity breaches.

Our markets, and the American public, need swift and clear disclosure when their personal information is compromised in cybersecurity breaches. If confirmed, I will work with the Chairman, my fellow Commissioners, and the Division of Corporation Finance to update these rules in a fashion that makes clear the importance of cybersecurity risk to public-company investors.

Q.20. How should the SEC ensure that any cybersecurity disclosure guidelines for public companies require only timely and material disclosure instead of that which is extraneous and untimely?

A.20. The best way to make sure our disclosure rules serve investors is to make sure they are updated to reflect the reality investors face in modern markets. Cybersecurity issues are a dynamic and evolving threat, and require dynamic rules to make sure investors get the information they need about those threats—which is why I favor reassessing whether these rules adequately address cybersecurity.

The materiality standard, which governs disclosures of this type, requires us to ask whether a reasonable investor would think the information relevant to the total mix of information they consider when making investment decisions. Use of this standard has, for decades, helped ensure that corporate disclosures are relevant and timely. If confirmed, I look forward to working with my fellow Commissioners to ensure that critical cybersecurity risks are promptly disclosed to investors and the American public.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TILLIS FROM ROBERT J. JACKSON, JR.

Q.1. In brief, what is the SEC currently doing right, what needs to change, and how do you plan on prioritizing your time, should you be confirmed?

A.1. The breadth and depth of the SEC's mission—protecting investors in the largest, deepest capital markets in the world—reflects an enormous privilege and responsibility. As an outsider to the agency, it is clear that the SEC has taken important steps to improve its effectiveness in the years since the financial crisis. But, as we discussed during the hearing, there is still a great deal of work to do. If I am confirmed, I would focus my time on the following three priorities.

The first is cybersecurity. As I mentioned during the hearing, I think recent events both at the SEC and public companies have taught us that we have a long way to go in making sure that our securities regulators have the tools and technologies they need to keep up with the changing marketplace. The SEC cannot fulfill its mission if it cannot assure investors that both its own systems, and the systems of the public companies it regulates, are protected from cybersecurity breaches. I hope to work closely with Chairman Clayton, my fellow Commissioners, and the Staff to make sure that the information that Americans entrust to the SEC and to public companies is better protected.

Second, I would focus on finishing the rules required by Dodd–Frank. The SEC's failure to do so in the 7 years since the passage of that law has harmed investors, companies, and the morale of the SEC Staff itself. It has also exposed investors to risks that Congress has ordered be addressed, for example by failing to make sure that public companies have clawback policies in place that require executives to give back pay they were awarded by mistake. If confirmed, I would urge the Chairman and my fellow Commissioners to follow the law and finish these rules.

Finally, I would focus on holding individuals accountable for financial fraud. In particular, the SEC should be thinking about how to modernize the law of insider-trading to deal with the changes that have occurred in securities markets over the last two decades. The SEC should also work with FINRA to ensure that investors have better information on the stockbrokers most likely to commit fraud. Making sure that individuals who engage in insider trading or investor fraud pay the price is critical to the SEC's mission, and more can and should be done on that front.

Q.2. Do you believe that private capital being put into underperforming companies can improve the company's performance?

A.2. As I have previously written, there is significant evidence that investors like these can help hold corporate management's feet to the fire, especially at underperforming companies—and that this work can be good for all investors and the economy more generally.[1] There is also evidence, however, that these investors can engage in counterproductive tactics that undermine long-term value creation.[2]

Capturing the benefits of private capital—the corporate accountability and growth that have so often been associated with such investments—while minimizing the costs of those tactics is critical to ensuring the growth of the American economy. If confirmed, I would very much look forward to working with my fellow Commissioners, and your office, to ensure that our securities laws are up to that task.

Q.3. Do you believe that curbing more private investment would help underperforming companies?

A.3. No. Private investment in underperforming companies is an important source of accountability. Corporate management knows that, if the firm performs poorly, a private investor may well intervene and demand better performance on behalf of all shareholders. This knowledge—even, and perhaps especially, for managers who are never the target of such an investment—encourages executives to do everything they can to ensure that the company performs well.

Q.4. Do you agree that private capital being put into companies leads to more transparency and communications with existing shareholders?

A.4. Private investors often encourage other investors to pay attention to particular issues that are undermining the company's performance.[3] Because private investors usually cannot force change at public companies by themselves, they must persuade other shareholders that their ideas are best for the company. That process can often improve transparency and communication among all of the company's shareholders—as well as the company's manage-

[1] See, e.g., Lucian Bebchuk and Robert J. Jackson, Jr., "The Law and Economics of Blockholder Disclosure", 2 *Harv. Bus. L. Rev.* 39 (2012).

[2] See, e.g., Leo E. Strine, Jr., "Who Bleeds When the Wolves Bite? A Flesh-and-Blood Perspective on Hedge Fund Activism and Our Strange Corporate Governance System", 126 *Yale L.J.* 1870 (2017).

[3] See, e.g., Ronald J. Gilson and Jeffrey N. Gordon, "The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights", 113 *Colum. L. Rev.* 863 (2013).

ment, who also has an opportunity to persuade investors that their strategy is right for the company over the long term.

Q.5. Do you agree that corporate CEOs are more responsive to the market today than they were in the past?

A.5. Yes: recent corporate governance reforms, including those regarding director independence, executive pay, and shareholder proposals have encouraged CEOs to be increasingly responsive to shareholders. But let's be clear: there is still a great deal of work left to do. As I indicated during the hearing, it is not my sense that what corporate America is suffering from is too much accountability.

Q.6. Do you believe that restricting or making it harder for private capital to invest in American companies is a good idea?

A.6. No: in general, the benefits that private investors offer—by holding corporate managers' feet to the fire and making sure they are working hard for all investors—are critically important to the health of American companies and the broader economy. Making it harder for private investors to do that work is unlikely to be beneficial for the investors who depend on the growth of the economy to fund their child's education and their retirements.

However, it is also important to acknowledge that these investors can engage in counterproductive tactics—like using undisclosed derivative positions to attack unsuspecting companies and their constituents—that deserve immediate attention from the SEC. If confirmed, I look forward to working with the Chairman, my fellow Commissioners, and the SEC's Staff to ensure that American investors continue to receive the benefits of private investment in their companies—while reducing the costs of some investors' counterproductive behavior.

Q.7. Do you believe that private capital should be flexible and adaptive to quickly changing circumstances?

A.7. Yes. One of the many benefits of private investments in public companies is that private capital can often respond quickly to the changing needs of the company and the economy. As I have previously noted in my research, these benefits are especially valuable when private capital is invested in companies over the longer term.[4] In those cases, the presence of private capital can help make sure that corporate management is working toward the kind of long-term value creation upon which investors, employees, and our economy rely.

Q.8. Do you think that the current IPO market is at its peak? What could we be doing to facilitate more entrants into the public markets? What are some determinative factors that companies evaluate when making a decision to enter into the public markets? Do you think that some of these factors have served as preclusive, often determinative factors for a company deciding not to enter the public marketplace? How do public companies affect job creation and economic growth?

[4] Robert J. Jackson, Jr., "Private Equity and Executive Compensation", 60 *UCLA L. Rev.* 638, 658 (2013) (documenting the relationship between CEO incentives to maximize firm value and long-term private-equity investments in companies that the investor has taken public).

A.8. There are a wide range of reasons why many companies today are choosing not to go public, and all of them deserve the SEC's attention. For example, we now have deeper and more robust private capital markets than ever before, which allows companies to stay private for far longer than they once could. For another, the capital-markets fees that a company must pay to go public are far higher in the United States than in other markets, giving entrepreneurs pause before listing their shares. And the pressure public companies face to meet quarterly earnings estimates, rather than to grow the company over the long term, no doubt can encourage some companies to stay private rather than go public.

Public companies are critical to job creation and the long-term economic growth of our Nation, and I am committed to ensuring that we are doing all we can to encourage companies to go public in American markets. Chairman Clayton has made clear that this issue is a priority for him, and I look forward to working with the Chairman and my fellow Commissioners to help encourage companies to raise capital in our public markets—and make sure that investors are protected in the process.

Q.9. Do you think that the SEC should have a formalized retrospective review process, much like prudential regulators have, by which the SEC can take a holistic look at its rules and regulations and decide which ones are outmoded, ineffective, burdensome, etc., or similarly decide which ones need to be changed and modernized?

A.9. I believe that the Commission should consistently review its rules to make sure that those rules give investors the information they need about the companies they own. To the degree that SEC rules are outmoded, ineffective, or burdensome, modernizing those rules is a critical task, and several rules have gone far too long without needed updates.[5]

As an outsider to the Commission and its work, it is difficult for me to say whether formalizing the retrospective review process would be beneficial. To know the answer to that question, the SEC should investigate, among other things, why so many key rules have gone so long without modernization or revision and what Staff resources are available for that work. If confirmed, I would look forward to working with the Staff and my fellow Commissioners to answer those questions—and to make sure our rules are keeping up with the demands of modern markets and investors.

Q.10. How do you plan on working with the CFTC to address harmonization issues?

A.10. Because the SEC's and CFTC's work has so often overlapped—especially in light of the activities in today's markets that cut across traditional regulatory boundaries—coordination and harmonization among the agencies' rules is critical to maintaining fair and orderly markets. I am aware that the Staff of both agencies have worked extensively to take steps toward better harmonization

[5] For example, as I have noted in my research, the rules governing current disclosure on Form 8-K—that is, the rules that govern the rapid updates that investors depend upon to learn about new corporate developments—have not been carefully examined for more than a decade. See, e.g., Alma Cohen, Robert J. Jackson, Jr., and Joshua Mitts, "The 8-K Trading Gap" (Columbia Law and Economics Working Paper) (2015); see also Securities and Exchange Commission, Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, Release Nos. 33-8400, 34-49424, 17 CFR §228 (Aug. 23, 2004).

in the past, including with respect to the regulation of investment advisers,[6] and have also reviewed the joint report on harmonization that both agencies prepared in the wake of the financial crisis.[7]

Although this work has been important, I understand that there is more to be done to address the sometimes-overlapping regulations governing the work of the SEC and CFTC. If confirmed, I would look forward to working with my fellow Commissioners, the Staff, your office, and Commissioners at the CFTC to ensure that the agencies provide consistent and clear guidance to market participants.

Q.11. With regard to cyber infrastructure and enforcement actions, what do you think the SEC is doing right and what would you change?

A.11. As an outsider to the agency and its work, I am not in a position to assess the SEC's cybersecurity infrastructure. As we discussed during the hearing, however, I am deeply concerned by the recent revelations regarding the cybersecurity breach of the SEC's EDGAR system—so much so that I have placed securing the SEC's systems among my top few priorities. If I am confirmed, the first question I will ask Chairman Clayton is exactly what happened that made the SEC's systems vulnerable to such a breach—and what we need to do to make sure it never happens again.

With respect to enforcement, while taking care not to speculate regarding particular enforcement actions that may come before me if I am confirmed as a Commissioner, I want to be clear: the SEC can and should make far better use of data science to make its enforcement efforts more efficient and effective. My previous research has used those technologies to show how the SEC could more easily identify potential cases.[8] I believe that these techniques could help us to better understand the circumstances and larger trends behind where we'll find bad actors—and make it easier for us to hold them accountable.

Q.12. The Treasury Capital Markets report touched on potential changes to best execution and potential changes to market structure issues, particularly in the context of Reg. NMS. Can you give me your thoughts on what you view as potential areas for reform within the context of Reg. NMS?

A.12. Fundamentally, the SEC's role in the regulation of capital markets more generally—and trading venues in particular—is to make sure that American investors get the level playing field they deserve, and pay a fair price when they buy shares of public companies. Regulation NMS was an important step toward reducing trading costs and increasing liquidity in our equity markets, both important goals.

But Regulation NMS is now over a decade old, and I am aware of the concerns that the rule has added complexity to our capital

[6] See, e.g., Commodity Futures Trading Commission, "Harmonization of Compliance Obligations for Registered Investment Companies Required To Register as Commodity Pool Operators", RIN 3038-AD75, 17 CFR Part 4 (Aug. 12, 2013).

[7] Commodity Futures Trading Commission and Securities and Exchange Commission, "A Joint Report of the SEC and the CFTC on Harmonization of Regulation" (Oct. 16, 2009).

[8] See, e.g., Alma Cohen, Robert J. Jackson, Jr., and Joshua Mitts, "The 8-K Trading Gap" (Columbia Law and Economics Working Paper) (2015).

markets—and that these markets are now characterized by fragmentation that harms investors. In light of the rapid changes in these markets, it may well be time for the SEC to reassess the degree to which these rules continue to be sufficient to protect investors. The Equity Market Structure Advisory Committee has provided important guidance to the Commission in this respect.[9] If confirmed, I would look forward to working with my fellow Commissioners, the Staff, and your office to explore the degree to which Regulation NMS needs to be modernized.

Q.13. Some have argued that our market structure systems have become increasingly complex and that the layered regulations have created incentives to game the system. Can you help me understand your views on reforming our domestic market structure and can you commit to this body that you will work with the Committee in tackling some of the languishing issues that have been pervasive in market structure over the last 10+ years?

A.13. Yes: If confirmed, I will work with the Committee to tackle any market-structure issues that are keeping our market venues from offering American investors a fair price. As your question points out, our markets are rapidly evolving, and that is especially true in the area of market structure, where frequent updates to SEC rules may be needed to ensure our law keeps pace with the markets. In particular, I am aware of the concern that legal changes and other factors have led to fragmentation that harms investors. In light of the rapid changes in these markets, it may well be time for the SEC to reassess whether these rules continue to be sufficient to protect investors.

Separately, although a great deal of time and regulatory attention has been given to the structure of our equity markets, millions of Americans—especially those at or near retirement—also rely on the structure of our debt markets to give them the best possible price for their investments. Although these debt markets are crucial to American families, they have received relatively scant attention. That is why I was delighted to see Chairman Clayton announce his interest in forming a Fixed Income Market Structure Advisory Committee.[10] If confirmed, I would work with the Chairman and my fellow Commissioners to make sure that American investors can rely on the structure of our debt markets to help them prepare for and fund their retirement plans.

Q.14. IT modernization enables financial services firms to protect constituent financial information. In an environment of increasing cybersecurity threats, how will you use your role at the SEC to promote IT modernization across the financial services sector and at the SEC?

A.14. I share your concern that, in a world with increasing cybersecurity threats, SEC rules must evolve in a way that promotes information-technology modernization. That's why I agree with Chairman Clayton that cybersecurity is an area where there is not enough disclosure—and, as your question suggests, that is espe-

[9] See, e.g., SEC Equity Market Structure Advisory Committee, "Recommendations Regarding Modifying Rule 605 and Rule 606" (Nov. 29, 2016).

[10] See Jay Clayton, Chairman, Securities and Exchange Commission, Remarks at the Economic Club of New York (July 12, 2017).

cially true at financial-services firms entrusted with millions of Americans' financial information.

In particular, I'm concerned that our disclosure rules, and especially the rules governing Form 8-K, have not kept pace with these developments—and do not make clear to public companies the urgency of disclosures related to cybersecurity breaches. If confirmed, I will work with the Chair, my fellow Commissioners, and the Division of Corporation Finance to update these rules in a fashion that makes clear the importance of cybersecurity risk to public-company investors.

Regarding IT modernization at the SEC itself, I share the concern that recent news of a breach of SEC systems reflects significant issues with the SEC's operational cybersecurity. Without understanding the facts behind that and other recent developments, I am not in a position to assess the current State of the SEC's information-technology resources. However, as I mentioned at the hearing, if confirmed the SEC's cybersecurity would be among my highest priorities as a Commissioner. The Commission cannot fulfill its mission—nor can it expect public companies to take cybersecurity seriously—unless its own house is in order.

Q.15. How will you ensure that regulations set by the SEC do not impede progress on IT modernization?

A.15. I share your concern that SEC rules in this area must encourage, rather than impede, corporate investments in the kind of information-technology infrastructure that can protect Americans' data from cybersecurity threats. That includes not only the disclosure rules you referred to in your previous question, but also Regulation SCI—which, some have argued, may inadvertently discourage exchanges from adopting the latest technology to defend against cyberthreats.

As an outsider to the Commission and its work, I am not yet able to assess the evidence underlying that and other concerns in this area—and what the SEC might do about it. Factors the SEC should be focused on, however, include the risk to the broader economy of cybersecurity breaches, the costs associated with adapting to new cybersecurity regulations, and the risks consumers face if those handling sensitive personal data have lax cybersecurity protections. If confirmed, I look forward to learning more about the Staff's experience in administering these rules. And I would be delighted to work with you and your office to ensure that all of the SEC's rules—including those governing Form 8-K and Regulation SCI—give American companies the incentives they need to protect investors from cyberthreats.

Q.16. With regard to corporate disclosures, what standard should be used to determine whether or not something is disclosed?

A.16. As I mentioned during the hearing, the concept of materiality is the touchstone of our Federal disclosure rules. This standard—which asks whether particular information would be relevant to the total mix of information a reasonable investor would use when making an investment decision—has served American investors and public companies well for generations.

As I have written before, the best way to know whether something is material—that is, whether it's important to investors—is to ask investors. That's certainly what the Commission has done in the past. For example, the SEC's rules regarding executive compensation were developed in response to significant investor interest in those matters.[11] Our markets have evolved rapidly over the past 10 years, and I'm concerned that the Commission's disclosure rules haven't kept pace with investors' needs.

It is an essential part of the SEC's task to ensure that the Commission's disclosure rules continue to evolve in order to make sure that investors have the information they need to evaluate the companies that they own. If confirmed, I will urge Chairman Clayton, my fellow Commissioners, and the Staff to update our disclosure rules to give investors that information.

Q.17. On February 24, 2017, President Trump signed an Executive Order on Enforcing the Regulatory Reform Agenda, part of which focused on identifying regulations that are "outdated, unnecessary, and ineffective." Given recent technological advances, one area of particular focus should be regulations requiring paper-based communications as the default delivery method in communicating with investors and consumers. Such regulations are prime examples of regulations that were first adopted decades ago and have failed to evolve with the times.

If confirmed, will you work to ensure that the SEC identifies and modifies outdated regulations regarding paper-based communications?

A.17. I believe that the Commission should consistently review its rules to make sure that those rules give investors the information they need about the companies they own. To the degree that SEC rules are outmoded—as many rules requiring paper-based communications may be today—modernizing those rules is a critical task.

While I would not want to comment on any specific proposal that may come before me as a Commissioner if I am confirmed, I would look forward to working with SEC Staff, fellow Commissioners, and this Committee to identify any outdated regulations—including regulations mandating paper-based communications—that may no longer serve investors.

Q.18 Do you believe the recent action by the SEC regarding MiFID II was appropriate? If you do not, how would you have addressed this issue?

A.18. I understand that the Division of Investment Management and the Division of Trading and Markets recently issued time-limited no-action letters in this area. Because these matters may well be raised before the full Commission in the future, I hesitate to comment specifically on questions that may come before me as a Commissioner.

Nevertheless, I want to be clear: it is crucial that American investors know who pays for research on public company stocks and what those researchers' financial incentives are. The European approach to this problem—that is, MiFID II—reflects one way to give investors that information. But it is not the only way to make sure

[11] See Securities and Exchange Commission, Executive Compensation Disclosure, Release No. 33-6940, 57 *FR* 29,582 (1992) (listing the shareholder-proposal activity related to executive pay at several large, public companies as a basis for promulgating disclosure rules on executive compensation).

that investors know who is producing equity research and who is paying for it. If confirmed, I look forward to working with the Staff in both the Division of Investment Management and the Division of Trading and Markets to understand the reasoning behind their recent letters—and their thinking about longer-term solutions in this area.

Q.19. Do you think that the U.S. and the SEC should import standards from other countries?

A.19. When considering how best to develop new legal standards, my approach is often to draw on as much data and experience as possible. While the experience of other countries can be helpful in this respect, it is always important to keep in mind that one size does not fit all—and that American markets are truly unique. We are fortunate to have the largest, deepest and most diverse capital markets in the world. Lessons from other jurisdictions may be useful in informing the way we think about our own law, but at bottom American securities law must be the right fit for American investors and companies.

Nevertheless, it is essential that U.S. regulators engage with international counterparts and make sure our positions are made clear on a wide range of regulatory questions that apply across national boundaries. The SEC, through its Office of International Affairs, has an important voice in international standard-setting bodies, and if confirmed I look forward to working with Staff, my fellow Commissioners, and our international counterparts to help make sure that American investors' interests are protected in capital markets around the world.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM ROBERT J. JACKSON, JR.

Q.1. In your testimony, you highlighted enforcement and prosecution of insider trading as top priorities. If confirmed, what recommendations will you make to Chairman Clayton to strengthen the ability of the enforcement division to hold accountable those that violate Federal securities laws?

A.1. I believe that holding corporate executives accountable when they violate the law is critical to maintaining trust in our financial system. There are two specific enforcement-related areas that deserve attention at the SEC.

First, if confirmed I will work with Chairman Clayton and the Division of Enforcement on using data science to make the process of identifying and litigating securities-fraud cases more efficient. My previous research has used those technologies to show how the SEC could more easily identify potential cases. I believe that these techniques could help us to better understand the circumstances and larger trends behind where we'll find bad actors—and make it easier for us to hold them accountable. [1]

Second, as I noted during the hearing, I think it is time for the Commission and the Congress to consider whether the law of insider trading in particular is keeping pace with our markets. One

[1] See, e.g., Alma Cohen, Robert J. Jackson, Jr., and Joshua Mitts, "The 8-K Trading Gap" (Columbia Law and Economics Working Paper) (2015).

reason that so few corporate insiders are held accountable is that the burdens of proof the Government faces in these cases were designed by common-law judges decades ago. The last time the SEC proposed updates to its rules in this area—updates that were designed to address uncertainty created by the courts—was nearly 20 years ago.[2] The scope and nature of corporate fraud has changed a great deal since then, and it may well be time for the SEC and Congress to clarify and strengthen our insider trading laws.

Q.2. In response to Chairman Crapo's questions, you raised the law of insider trading and you highlighted a concern that recent events may have caused investors to wonder whether the SEC is "really the cop on the beat we need to make sure that investors are getting a fair deal." Can you expound on this? In your opinion, does Congress need to codify insider trading law or make other changes to our Federal securities laws to ensure the SEC has the necessary authority to hold wrongdoers accountable?

A.2. Yes: Congress and the SEC should be thinking about updating the law of insider trading. For two generations, American insider trading law has been developed by judges on a case-by-case basis. There are many well-documented benefits to this approach, including drawing on the extraordinary wisdom of the judges who sit on our Nation's Federal bench. One downside of this regime, however, is that the law develops slowly—too slowly, some have argued, to keep pace with modern markets.

In particular, a recent series of cases have raised questions regarding the Government's burden of proof with respect to the benefits an insider must receive in connection with leaks of material nonpublic information to traders.[3] Uncertainty with respect to such a fundamental question of an insider's obligations to investors is, in my view, a serious problem. The SEC can and should frequently clarify its view of the meaning of the insider trading laws. As noted above, the Commission has not done so for nearly 20 years, and in my view it is time for the Commission to look at these matters again.[4]

Q.3. The concept of "materiality" is defined by the SEC as information that a reasonable investor could find important in determining whether to buy or sell securities. Can you explain how you think about the definition of materiality and whether you see emerging "material" areas—namely environmental, social, and governance topics—where the SEC should be increasing disclosure?

A.3. My view is that one way to know whether something is material—that is, whether it's important to investors—is to ask investors. That's certainly what the Commission has done in the past. For example, the SEC's rules regarding executive compensation were developed in response to significant investor interest in those

[2] See Securities and Exchange Commission, Proposed Rules: Selective Disclosure and Insider Trading, Release Nos. 33-7787, 34-42259, IC-24209, 17 CFR §230 (January 10, 2000) (noting that those rule proposals, like those that could be advanced by the SEC today, "clarif[ied] two unsettled issues under current insider trading law.").

[3] Salman v. United States, No. 15-628, 137 S. Ct. 420 (2016); see also United States v. Martoma, 869 F.3d 58 (2d Cir. 2017).

[4] See Securities and Exchange Commission, supra note 6.

matters.[5] Our markets have evolved rapidly over the past 10 years, and I'm worried that the Commission's disclosure rules haven't kept pace with investors' needs.

In particular, as your question suggests, investors have recently expressed extensive interest in matters that companies are often not disclosing. For example, information regarding a company's spending on politics has been the most common subject of shareholder proposals over the last decade.[6] As recent events have made clear, companies have not consistently taken the view that cybersecurity breaches demand prompt disclosure. And shareholder proposals asking companies to disclose the risks related to climate change are receiving "historically high levels of support."[7]

It is an essential part of the SEC's task to ensure that the Commission's disclosure rules continue to evolve in order to make sure that investors have the information they need to evaluate the companies that they own. If confirmed, I will urge Chairman Clayton, my fellow Commissioners, and the Staff to update our disclosure rules to give investors that information.

Q.4. I worked to include a provision in the Dodd–Frank Wall Street Reform and Consumer Protection Act to require publicly listed companies to disclose in their annual filing the ratio of their CEO's total compensation to their median worker's compensation. In August 2015, after 5 years of delays, I was pleased to see the SEC finally adopted a rule implementing §953(b) of Dodd–Frank.

If confirmed, will you commit to ensure that this rule is properly implemented? Will you work to ensure that provisions included by the Commission to facilitate compliance do not inadvertently open loopholes for companies looking to evade this requirement?

A.4. Yes. I have long shared your concern that the Commission took far too long to implement the rules required by Dodd–Frank, including the provision requiring disclosure of the ratio between the CEO's compensation and that of the median employee. As I noted at the hearing, Dodd–Frank is the law of the land—and has been for 7 years. It is time that the SEC and public companies comply with the law, and I'm delighted that this Spring American companies will finally disclose these ratios to the public.

As companies prepare to file those disclosures this Spring—and every year going forward—it will be critical to ensure that the Division of Corporation Finance carefully monitors compliance with the rule, and directs companies to give clear, concise and candid information. If confirmed, I will absolutely work to make sure investors get that kind of information.

Q.5. In light of the sweeping good faith efforts flexibility provided to companies by the Commission's September 2017 interpretive guidance, will you commit to supporting enforcement actions

[5] See Securities and Exchange Commission, "Executive Compensation Disclosure", Release No. 33-6940, 57 *FR* 29,582 (1992) (listing the shareholder-proposal activity related to executive pay at several large, public companies as a basis for promulgating disclosure rules on executive compensation).

[6] "Sharkrepellent Dataset of Factset Research Systems, Inc.", Proxy Proposals, available at *https://www.Sharkrepellent.net*.

[7] Thomas Singer, "Environmental and Social Proposals in the 2017 Proxy Season", *Harv. F. on Corp. Gov. and Fin. Reg.* (Oct. 26, 2017).

against companies that fail to provide disclosures in compliance with the requirements of the rule?

A.5. Yes. Without commenting on any particular matter that may come before me as a Commissioner if I am confirmed, I can say without reservation that I would support enforcement actions against companies that fail to comply with the law—including the requirement that firms disclose the ratio between the CEO's and their median worker's pay.

Disclosure rules like these, and the transparency they give investors, have been at the heart of the SEC's mission for generations. We have to take these rules seriously, and that means aggressively enforcing the securities laws when companies or individuals fail to comply with SEC rules.

Q.6. As you know, the SEC adopted a rule in 2009 requiring publicly traded companies to disclose more information on director selection and diversity. Many, including former SEC Chair White, have expressed concerns that the current rule may be inadequate and that shareholders need more comprehensive information to make informed investment and voting decisions.

How does the disclosure of specific details about the diversity of corporate boards assist shareholders in making informed investment and voting decisions?

A.6. As your question points out, disclosure regarding the diversity of corporate boards is not only the right thing to do, but it's the law: the SEC has required such disclosure for years. The reason is that investors have long argued that understanding a company's approach to boardroom diversity—and the benefits it can bring—helps make sure the board has the expertise and perspectives it needs to run the firm well. [8]

I share former Chair White's concern that existing SEC rules on this issue have proved inadequate. Women and minorities are astonishingly underrepresented on the boards of U.S. public companies, to the dismay of investors and employees alike. At a minimum, the SEC should make sure that companies are giving investors basic information about how the companies they own have considered diversity when assembling their directors. If confirmed, I will absolutely work with the Division of Corporation Finance to make certain that our rules give investors that information.

Q.7. One of the problems identified with the 2009 rule is the Commission's decision not to define diversity. Do you think the failure to define diversity in the rule undermines the value of the information provided in the current disclosure regime?

A.7. While I understand that the Staff declined to define diversity in order to allow issuers to use the definition most suited to its business model, time and experience have shown that the lack of guidance in this area has left both companies and investors without the information they need regarding boardroom diversity. In fact, the SEC Advisory Committee on Small and Emerging Companies recommended nearly a year ago that the SEC provide guidance on this issue, and the SEC's failure to do so has made it un-

---

[8] See, e.g., Ryan Vlastelica, "Vanguard Calls for More Diverse Corporate Boards, Better Climate-Change Disclosures", *Marketwatch* (Sept, 1, 2017).

necessarily costly for investors and companies to comply with the law.[9]

More importantly, the Commission's failure to enforce its own rule in this area has raised real questions among issuers and investors about the SEC's commitment to board diversity. Nearly 5 years, ago an empirical study of these disclosures revealed that more than half of them failed to comply with the most basic aspects of the SEC's rule on disclosure related to boardroom diversity.[10] If the Commission wants its commitment to boardroom diversity—and the rule of law—to be taken seriously, it must do a better job of consistently enforcing its disclosure rules in this area. If confirmed, I will work with my fellow Commissioners and the Staff of the Division of Corporation Finance to ensure that companies and boards can expect diversity-disclosure rules to be enforced to the letter of the law.

Q.8. In January 2016, former Chair White instructed staff to review existing company disclosures to determine whether the SEC should require companies to provide more specific details about their diversity practices. In June 2016, former Chair White announced that staff was preparing a recommendation to the Commission to propose amending the rule to require companies to include in their proxy statements more meaningful disclosures on their board members and nominees.[11] The current status of that project is unclear.

In December, the SEC's Advisory Committee on Small and Emerging Companies recommended the SEC amend the disclosure to require issuers to describe, in addition to any policy they may have with respect to diversity, the extent to which their boards are diverse.[12] If confirmed, will you commit to investigating this issue and taking steps to determine whether the SEC should revise its rule on director selection and diversity?

A.8. Yes. Given the consistent complaints from investors that the rule is not working, the statements from former Chair White to that effect, and, as your question notes, the recommendation from the Advisory Committee on Small and Emerging Companies, I am puzzled that this project has not moved forward, and concerned that it was not featured on the SEC's most recently announced regulatory agenda.

If confirmed, among my first questions for Chairman Clayton would be to ask why the Commission has not yet moved forward on this long-awaited project. I hope very much to work with the Chairman and my fellow Commissioners to ensure that investors receive the information they need to understand boardroom diversity in the companies they own.

Q.9. In your testimony, you highlighted the importance of completing outstanding Dodd–Frank rulemakings, and particularly

[9] Securities and Exchange Commission Advisory Committee on Small and Emerging Companies, Recommendation Regarding Corporate Board Diversity (February 16, 2017).

[10] Note, "The Glass Boardroom: The SEC's Role in Cracking the Door Open so That Women May Enter", 2013 *Colum. Bus. L. Rev.* 801 (2013).

[11] Mary Jo White, Chairman, Securities and Exchange Commission, "Focusing the Lens of Disclosure To Set the Path Forward on Board Diversity", Non-GAAP, and Sustainability (Jun. 27, 2016).

[12] Securities and Exchange Commission Advisory Committee on Small and Emerging Companies, supra note 13.

those that relate to executive compensation and clawback policies. I agree that this should be a top priority for every single member of the Commission.

Can you explain how failure to complete these rulemakings harms the market, disadvantages investors, and may encourage senior executives to make excessively risky decisions?

A.9. The Commission's failure to complete Dodd–Frank's mandated rules 7 years after its passage has been harmful to investors and companies. It reflects a troubling failure to follow the law at the Commission that I hope will be quickly rectified by Chairman Clayton and, if I am confirmed, my fellow Commissioners.

For 7 years, neither investors nor public companies has had any ability to know whether and when these rulemakings will actually become law. The result is that both parties spend enormous amounts of shareholder money to predict whether and when they will have to comply with these rules. That's good for lobbyists and lawyers, but hardly anyone else, and especially not the investors. As I mentioned at my hearing, ordinary, everyday investors are still waiting for basic, common-sense protections like rules requiring clawback of erroneously awarded executive pay to take effect. Without such rules, executives continue to have the incentives they had before the financial crisis to take excessive risk. I cannot see why those rules have not been implemented 7 years after Dodd–Frank's passage.

If confirmed, I will urge Chairman Clayton and my fellow Commissioners to finish the rules mandated by the Dodd–Frank Act. If the Commission wants public companies to take its commitment to the rule of law seriously, the SEC must be prepared to follow the law itself. Dodd–Frank is, I know, a controversial law. But it is the law, and the SEC is required to follow it.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARNER FROM ROBERT J. JACKSON, JR.

Q.1. The Citizens United v. FEC ruling allowed, among other things, corporations to contribute independent political expenditures. Public companies are active participants in our elections, yet their shareholders do not know the role that they play because the SEC has been reluctant or handcuffed from requiring firms to disclose their political contributions.

Do you believe shareholders have a right to know whether a company they've invested in is making contributions in their best interest?

A.1. The bedrock principle of securities-disclosure rules is the materiality standard. That standard asks us to consider what a reasonable investor would think affects the total mix of information about the stock that they are choosing to buy and sell. One way to evaluate that standard is to see whether investors express interest in particular kinds of information through the shareholder-proposal process. For decades, that is how the SEC has helped ensure that disclosure rules are evolving to keep pace with changes in market conditions and investor interests.[1]

As I have written previously, the case for rules requiring public companies to disclose their spending on politics is strong.[2] Over the past decade, requests for information about political spending have been the most common subject of shareholder proposals at large public companies, so it is clear that investors have a great deal of interest in these matters. Moreover, under current law, public companies are not required to give shareholders detailed information on political spending. Thus, to the degree that public companies are spending shareholder money on politics in a way that diverges from investors' interests, standard mechanisms for corporate accountability and oversight can work only if investors have the information they need to evaluate political spending at the companies they own.

Q.2. What should be the threshold for determining when a company discloses their political spending?

A.2. As I have previously written, the development of any rules in this area would raise a series of regulatory questions that would require close consultation with the SEC's Staff. As an outsider to the Commission and its work, it is difficult for me to say whether and how the evidence currently available to the Staff suggests that there should be a particular threshold for determining when a company must disclose their spending on politics.

Nevertheless, as I have indicated in previous research on this subject, a de minimis exception to rules in this area might appropriately balance the benefits of disclosing corporate spending on politics with the costs of disclosing small amounts of spending that are unlikely to be important to investors. As I have said before, the SEC's existing regulatory framework for such exceptions, such as SEC rules on disclosure of related-party transactions, may serve as a sound starting point for such an exception.[3]

Q.3. What policy levers does the SEC have to promote long-term value creation?

A.3. There are at least three tools at the SEC's disposal to encourage companies to focus on long-term value creation. The first is an area I have written about a great deal: executive pay.

Current practice requires most public-company executives to hold their stock-based pay for only 3 years, so it is unsurprising that those executives often pursue short-term stock-price increases rather than long-term value creation. As I mentioned during the hearing, it is time for corporate executives complaining about short-termism to put their money where their mouths are. SEC rules should encourage executives to hold their stock for far longer periods than they currently do. This would give executives powerful incentives to invest for the long term.

---

[1] See, e.g., Securities and Exchange Commission, Executive Compensation Disclosure, Release No. 33-6940, 57 *FR* 29,582 (1992) (developing executive-compensation disclosure rules, in part, in response to shareholder proposals on that subject at large public companies).

[2] See, e.g., Lucian A. Bebchuk and Robert J. Jackson, Jr., "Shining Light on Corporate Political Spending", 101 *Geo. L.J.* 923 (2013).

[3] See id. (citing 17 CFR §229.404(a) (2012) (exempting from the SEC's disclosure rules for related-party dealings transactions with a value of $120,000 or less)).

Second, the SEC should consider taking steps that would allow companies and investors to choose voting structures that favor shareholders who commit to hold shares for the long term.[4] The SEC should consider how to encourage and enable public companies and their investors to choose these voting arrangements if they see fit. Those arrangements, if appropriate for the particular company and investor base, could help ensure companies favor the interests of long-term investors over short-term speculators.

Finally, SEC rules governing stock buybacks—which allow corporations to return cash to investors today rather than invest for the long term—have not been updated since 2003. That was a very different time for our markets, our economy, and our country.[5] Given the importance of this issue to making sure that public companies invest for the long term, I believe these rules now deserve another look. Better disclosure of stock buybacks would require managers to explain the basis for their decision to investors and to the public, and allow markets to price the buyback properly. That kind of disclosure is absolutely worth considering, and if confirmed I would look forward to working with your office on this issue.

Q.4. Do you believe companies are engaging in too many stock buybacks and dividend payments and not spending enough on corporate growth?

A.4. On several occasions in recent years, companies have foregone long-term R&D investments, operational expansion, and strategic opportunities in order to return money to shareholders. Shareholders and stakeholders alike are right to question if authorizing buybacks or dividends payments help or harm the long-term health of the company and the economy.

As noted above, one way for the SEC to address this issue is to modernize its disclosure rules governing stock buybacks. I believe that doing so is especially important in light of the possibility that new legislation may soon encourage public companies to return cash now held overseas to the United States. The last time Congress enacted a corporate tax holiday, in 2004, American companies used a significant amount of that money for a wave of stock buybacks.[6] If tax law changes again to permit corporate cash to come home, I want to be sure that companies are prepared and required to explain to investors what they plan to do with that money—especially if they are going to use it for buybacks.

Q.5. Is there a way to center less attention on quarterly earnings?

A.5. Yes: the SEC has several tools at its disposal to help companies focus on long-term value creation rather than quarterly earnings. For one thing, SEC rules should encourage corporate executives to put their money where their mouth is and hold their stock-

---

[4] See, e.g., Patrick Bolton and Frederic Samama, "L-Shares: Rewarding Long-Term Investors" (ECGI Finance Working Paper) (2012).

[5] See Securities and Exchange Commission, "Purchases of Certain Equity Securities by the Issuer and Others", Release Nos. 33-8335; 34-48766; IC-26252, 17 CFR §228 (2003) (providing a safe harbor from certain securities-law liability for stock buybacks affected in a particular manner).

[6] See Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act" (NBER Working Paper No. 15023) (2009); see also Thomas J. Brennan, "Where the Money Really Went: A New Understanding of the AJCA Tax Holiday" (Northwestern Law and Economics Working Paper) (2014).

based pay for lengthier periods of time. Managers who cannot sell their stock holdings in the next quarter—but instead have to wait for years to cash in on their holdings—have far fewer incentives to manage to quarterly earnings.

Second, the SEC should consider allowing companies and investors to choose voting structures that favor shareholders who commit to hold shares for the long term. Those arrangements, if appropriate for the particular company and investor base, could help ensure that companies favor the interests of long-term investors over short-term speculators.

I share your broader concern about short-term pressures that compel companies to focus on meeting quarterly earnings targets. I'm concerned when companies are distributing earnings as dividends or driving up stock prices through buybacks while cutting back on R&D, capital expenditures, and other investments. If confirmed I would look forward to working with the Staff, my fellow Commissioners, and your office to encourage corporate management to focus on the long term.

Q.6. The disclosure of innumerable hacks over the past few years, recently punctuated by hacks of the SEC and Equifax, has made clear that we all need to raise our cybersecurity game. Given the important role broker-dealers play in the formation and distribution of capital in the United States, do you think it's appropriate for FINRA, in its examination of broker dealers, to perform cyber-vulnerability assessments of registered broker dealers?

A.6. I absolutely share your concern that broker-dealers—who are entrusted with the personal financial information of millions of American families and play critical roles in our securities and derivatives markets—must take every possible step to protect themselves against cybersecurity threats. And I agree that all regulators—including the SEC and FINRA—must prioritize responding to a rapidly evolving cyberthreat.

As an outsider to the SEC, FINRA, and their work, I am not in a position to know whether FINRA should initiate an examination program of the kind described in your question. The SEC should, however, be asking whether FINRA's current examination programs encompass this type of review, what existing data FINRA and the SEC has about brokers' vulnerability to cyber-related threats, and what steps the SEC or FINRA can take to make sure that investors have as much information as possible about the broker's cybersecurity preparedness. If confirmed, I would look forward to working with SEC and FINRA Staff, my fellow Commissioners, and your Office to make sure FINRA takes whatever steps are necessary to protect broker-dealer customers from cybersecurity threats.

Q.7. On Oct. 15, 2014, the Treasury market flash rally occurred, where the yield on the benchmark 10-year U.S. Treasury traded in a 37-basis-point range (0.37 percent), only to close six basis points below its opening level. Principal trading firms (PTFs) account for a majority of trading in inter-dealer Treasury markets, which represent half of all trading in Treasuries. Due to a loophole, PTFs, including many that use algorithmic strategies, have not been required to register as brokers. This allows them to escape oversight and reporting requirements. Will you commit to ensuring that PTFs are required to register as brokers?

A.7. The Treasury market plays a vital role in our financial markets and economy, providing a risk-free benchmark to investors around the world and financing the critical work of our Government. Like so many modern markets, the Treasury market has seen a number of significant technological changes over recent years, including the increased prominence of PTFs.

I am familiar with the Joint Staff Report on the events of October 15, 2014, produced by the staff of the Treasury, Federal Reserve Board of Governors, Federal Reserve Bank of New York, SEC, and CFTC, and I share your concerns regarding data and oversight gaps of PTFs.[7] If confirmed, I look forward to working with the Staff, fellow regulators, and Congress to ensure there is appropriate oversight and transparency in the Treasury market and, more broadly, that the financial regulatory community prioritizes preserving confidence in the world's deepest and most liquid market.

Q.8. Under current law, Regulation ATS's basic regulatory standards for exchanges and other financial markets are designed to ensure market resilience, integrity and adequate operational risk controls. But trading venues that facilitate the exchange of Government securities are excluded from Regulation ATS. And by excluding them from Regulation ATS, they are also excluded from Regulation SCI's cybersecurity requirements. Will you commit to closing the loophole that permits Government-securities trading venues to avoid these basic requirements?

A.8. Because of the importance of the Treasury market to the functioning of the financial markets that millions of Americans depend upon each day, I share your concerns about trading venues that focus on Government securities. Participants in these venues must have advanced cybersecurity protections to ensure that these crucial markets are not susceptible to cyberthreats.

As an outsider to the Commission and its work, I am not familiar with the Staff's full basis for concluding that exchanges of this type may be excluded from Regulation SCI's cybersecurity requirements. When determining whether that exclusion is appropriate, however, the Commission should focus on other cybersecurity requirements that may apply to these trading venues, the degree to which the exclusion exposes these markets and investors to unacceptable risks of data breaches, and existing cybersecurity protections in place at these venues.

If confirmed, I will work with my fellow Commissioners and the Staff to understand why these venues have been excluded from the reach of Regulation SCI. And I would look forward to learning more about the Staff's experience in administering Regulation SCI in evaluating whether further efforts are needed to promote the resilience and integrity of trading venues.

---

[7] See U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, Securities and Exchange Commission, and Commodity Futures Trading Commission, The U.S. Treasury Market on October 15, 2014 (July 13, 2015).

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM ROBERT J. JACKSON, JR.

Q.1. On June 1, 2017, the SEC solicited public comments from retail investors and other interested parties on revising its standards of conduct for investment advisers and broker-dealers. In this request for comments the SEC asked "If the commission were to proceed with a disclosure-based approach to potential regulatory action, what should that be?"[1] Do you believe that the financial incentives that create conflicts of interest in the retail investment market that harm investors can be eliminated by enhanced disclosure alone?

A.1. I share the concern that retail investors must be protected from money managers who act contrary to their fundamental duties to their customers. When American investors entrust their savings to one of these institutions—whether an investment adviser or broker-dealer—they need to know that those who manage their money have clear obligations to their customers.

Disclosure lies at the heart of our securities laws, and has often served as an effective first line of defense when protecting American investors from those who would defraud them. But it is not the only tool in the SEC's toolkit, and I am deeply skeptical that disclosure alone can eliminate conflicts of interest in the retail investment market.

My general approach to questions of this type is to let the facts—evidence from the behavior of retail investors and their advisors—tell us what kinds of regulatory approaches are most likely to succeed. In this case, a considerable body of research—some commissioned by the SEC—makes clear that disclosure is often necessary but not sufficient to address conflicts of interest in the retail investment market.[2] The evidence tells us that the complexity of financial products and compensation structures often makes disclosure ineffective for many retail investors. And the data also suggest that disclosures may be least effective for the investors who need protection the most.

As I noted at the hearing, I believe that the SEC has an important role to play in this area. But it is critical that, whatever steps the Commission takes, American families who entrust their savings to others can rest easy in the knowledge that those who manage their money have an obligation to protect their clients from conflicts.

Q.2. If not, what steps will you take to directly tackle problematic incentives that lead to conflicts of interest that harm investors? If so, how do you design a disclosure regime that eliminates problematic financial incentives?

A.2. It is important to me that I be careful to avoid comment on a matter that may come before me if I am confirmed as a Commissioner. Moreover, as an outsider, I have not been privy to the ongoing work at the SEC on matters related to financial advisers' duties

[1] Jay Clayton, Chairman, Securities and Exchange Commission, "Public Comments From Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers" (June 1, 2017).

[2] See Securities and Exchange Commission, Comments on Duties of Brokers, Dealers, and Investment Advisers, Release Nos. 34-69013, IA-3558, File No. 4-606.

to their clients—and, thus, am not in a position to comment on what particular regulatory approaches the SEC might be considering.

However, it is critical to create a regulatory structure that ensures that firms do not reward advisers for working against their clients' best interests. If confirmed, I would look forward to working with my fellow Commissioners and this Committee to create those kinds of protections.

Q.3. If the commission proceeds with a disclosure-based approach to potential regulator action, what user tests will the Commission conduct to prove that all investors, not just the most sophisticated, fully understand and appreciate the nature and extent of the conflicts of interest and make a truly informed decision as a result?

A.3. As an outsider, I have not been privy to the ongoing work at the SEC on matters related to financial advisers' duties to their clients—and, thus, am not in a position to comment on what particular regulatory approaches the SEC might be considering. I have also not had the benefit of consultation with the Staff now working on this issue—or the opportunity to ask them about the user tests they might be considering to ensure that disclosures are designed to protect investors.

But let me be clear: any disclosure-based approach in this area should be grounded in evidence that proves it will be effective in arming investors with the information they need to make a truly informed decision. That evidence should carefully consider the different effects that disclosures might have on investors with different backgrounds, expertise, and financial objectives. And disclosure-based policy prescriptions should take those differences into account when designing the rules governing adviser disclosures. Poorly designed disclosures are unlikely to mitigate conflicts of interest—and may risk further confusing investors already overwhelmed by the complexity of financial advice.

Moreover, as noted above some conflicts are so complex that I believe they are unlikely to be mitigated through disclosure alone. If confirmed, I would work with the SEC's Staff and my fellow Commissioners to ensure that the SEC's work in this area is effective at ensuring that retail investors are made aware of any conflicts of interest their broker-dealer faces.

Q.4. Will you consult the extensive economic analysis the Department of Labor put together for their rulemaking on the fiduciary standard, including analysis on the incidence and cost of conflicts of interest in the financial services industry and on how these financial conflicts influence adviser recommendations?

A.4. Yes. As noted above, my approach to these questions will be evidence-based, and I will absolutely consider the substantive economic analysis produced by both Government agencies and outside entities on the incidence and impact of conflicts of interest, including the Department of Labor's economic analysis of the fiduciary rule. I would also be delighted to consult with current Department of Labor personnel who have worked on that Department's rulemaking in this area.

Q.5. How will you ensure that broker-dealers do not call themselves advisers? How can investors distinguish between sellers and advisers if sellers are allowed to market themselves as advisers?

A.5. I share your concern that investors need to have absolute clarity about what types of financial professionals they are working with and what services they are providing. Anyone who represents himself or herself as providing financial advice should be subject to duties appropriate to that role.

As the SEC Staff noted in a 2011 report, "[d]espite the extensive regulation of both investment advisers and broker-dealers, retail customers do not understand and are confused by the . . . standards of care applicable to investment advisers and broker-dealers when providing personalized investment advice and recommendations about securities."[3] If confirmed, I would be delighted to engage with firms, consumer and investor advocates, and other stakeholders to determine whether any additional steps should be taken to ensure that investors understand the difference between broker-dealers and advisers.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR DONNELLY FROM ROBERT J. JACKSON, JR.

Q.1. In previous conversations with Mr. Jackson and Ms. Peirce, we have discussed my concerns that the wave of stock buybacks in recent years has been at the expense of the long-term health of companies, their workers, and their communities.

Are you concerned that the increase of stock buybacks in recent years has been at the expense of investments in American workers?

A.1. Yes. To the degree that stock buybacks are occurring because corporate executives are failing to make important and productive investments in their employees and their communities, this is an issue that concerns me—and should concern all Commissioners. Shareholders and stakeholders alike are right to question whether buybacks help or harm the long-term health of the company, the long-term performance of its stock, and the long-term well-being of its employees.

As we discussed, the SEC's rules governing stock buybacks were last substantially updated in 2003—a very different time for our markets, our economy, and our country.[1] Given the importance of this issue to investors and employees, I believe these rules now deserve another look—and should be updated in a way that gives the stakeholders in these companies full transparency as to the reasons why the company has chosen to buy back shares.

Q.2. What actions can or should the SEC take to better monitor stock buybacks and to increase transparency? What about requiring more immediate disclosure (as opposed to quarterly, as currently required)?

---

[3] Securities and Exchange Commission, "Study on Investment Advisers and Broker-Dealers" (January 2011).

[1] See Securities and Exchange Commission, "Purchases of Certain Equity Securities by the Issuer and Others", Release Nos. 33-8335; 34-48766; IC-26252, 17 CFR §228 (2003) (providing a safe harbor from certain securities-law liability for stock buybacks affected in a particular manner).

A.2. These proposals, and several others that would improve transparency around repurchases, deserve close consideration as the SEC works to modernize its rules governing stock buybacks. When the SEC last considered these rules in 2003, the scale and scope of stock buybacks—and their importance to the economy as a whole—were far smaller than they are today. Better disclosure of stock buybacks would require managers to explain the basis for their decision to investors and to the public, and allow markets to price the buyback properly. That kind of disclosure is absolutely worth considering, and if confirmed I would look forward to working with your office on this issue.

Moreover, as we discussed during the hearing, I'm especially concerned that current rules are not sufficient if new legislation encourages repatriation of corporate profits from overseas. We know that the last time Congress enacted a corporate tax holiday, in 2004, American companies used a significant amount of that money for a wave of stock buybacks. [2] If tax law changes again to permit corporate cash to come home, I want to be sure that companies are prepared and required to explain to investors what they plan to do with that money—especially if they are going to use it for buybacks. If I'm confirmed, I would look forward to working with my fellow Commissioners and the Staff to make sure our securities laws give investors the information they need if Congress enacts another tax holiday.

Q.3. Mr. Jackson, your written testimony includes this excerpt: "I will work to implement the corporate-governance protections that Congress has enshrined into law—so that investors, employees, and communities can be sure that our companies are working to produce the kind of long-term value creation that has been the hallmark of the American economy for generations." I agree that companies should produce long-term value creation, but unfortunately "short-termism" has become a disease; Wall Street pressure results in corporate management making decisions based on the next quarter as opposed to the next decade.

Ms. Peirce, do you share similar concerns about "corporate short-termism"? What actions can or should the SEC take to combat this problem and encourage long-term value creation?

A.3. There are at least three areas in which the SEC should consider action to encourage companies to focus on the long term. The first is an area I have written about a great deal: executive pay.

Current corporate practice requires most public-company executives to hold their stock-based pay for only 3 years, so it is unsurprising that those executives often pursue short-term stock-price increases rather than long-term value creation. As I mentioned during the hearing, it is time for corporate executives complaining about short-termism to put their money where their mouths are. SEC rules should encourage executives to hold their stock for far longer periods than they currently do. This would give

[2] See Dhammika Dharmapala, C. Fritz Foley, and Kristin J. Forbes, "Watch What I Do, Not What I Say: The Unintended Consequences of the Homeland Investment Act" (NBER Working Paper No. 15023) (2009); see also Thomas J. Brennan, "Where the Money Really Went: A New Understanding of the AJCA Tax Holiday" (Northwestern Law and Economics Working Paper) (2014).

executives powerful incentives to invest for the long-term rather than manage to quarterly earnings targets.

Second, the SEC should consider taking steps that would allow companies and investors to choose voting structures that favor shareholders who commit to hold shares for the long term. Academics have argued that permitting these structures can be beneficial, and other jurisdictions have long permitted their use.[3] The SEC should consider how to encourage and enable public companies and their investors to choose these voting arrangements. Those arrangements, if appropriate for the particular company and investor base, could help ensure companies favor the interests of long-term investors over short-term speculators.

Finally, SEC rules governing stock buybacks—which allow corporations to return cash to investors today rather than invest for the long term—have not been updated since 2003. That was a very different time for our markets, our economy, and our country.[4] Given the importance of this issue to making sure that public companies invest for the long term, I believe these rules now deserve another look. Better disclosure of stock buybacks would require managers to explain the basis for their decision to investors and to the public, and allow markets to price the buyback properly. That kind of disclosure is absolutely worth considering, and if confirmed I would look forward to working with your office on this issue.

Q.4. Mr. Jackson, in our meeting, I mentioned the Carrier layoffs and the heart-wrenching video where a corporate executive told hundreds of workers their jobs were going to Mexico. In response, I crafted the End Outsourcing Act to keep jobs in America by restricting tax breaks and Federal contracts for companies that ship jobs to foreign countries.

It is difficult, however, to track when and where outsourcing occurs. I believe the SEC can take modest steps in this regard by requiring public corporations to disclose country-by-country employment. This would help investors determine which companies employ American workers and better understand where outsourcing has occurred. Do you support requiring corporations to disclose employment on a country-by-country basis to help increase transparency of outsourcing and American employment?

A.4. Thank you for the opportunity to discuss this issue in our meeting—and for urging me to view the video mentioned in your question, which I watched the next day.[5] Witnessing the devastating impact of Carrier's decision firsthand helped me understand the importance of this issue—and, if confirmed, I will keep those pictures and those people closely in mind each day I work at the SEC.

Whether the kind of disclosure rule described in your question would be appropriate depends upon whether the information in question would be material to investors—that is, whether it would

[3] See, e.g., Patrick Bolton and Frederic Samama, "L-Shares: Rewarding Long-Term Investors" (ECGI Finance Working Paper) (2012).

[4] See Securities and Exchange Commission, "Purchases of Certain Equity Securities by the Issuer and Others", Release Nos. 33-8335; 34-48766; IC-26252, 17 CFR §228 (2003) (providing a safe harbor from certain securities-law liability for stock buybacks affected in a particular manner).

[5] See YouTube, "Carrier Air Conditioner Moving 1,400 Jobs to Mexico" (Feb. 11, 2016), available at *https://www.youtube.com/watch?v=Y3ttxGMQOrY*.

alter the total mix of information that shareholders would consider when investing in the company. As I have written before, one way to know whether certain information is material is to ask whether shareholders have expressed interest in that information.

Many significant investors—including large pension funds and mutual funds—have recently expressed interest in the information described in your question, both in their public statements regarding these matters and through shareholder proposals. For this reason—and because this issue is so critical to the future of millions of Americans—I would welcome the opportunity to work with the Commission and your office to investigate whether SEC rules should be updated to require disclosure of these matters.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR SCHATZ FROM ROBERT J. JACKSON, JR.

Q.1. I am very concerned about legislative proposals to dramatically increase the threshold for submitting shareholder proposals. Shareholder proposals are an important way for shareholders to communicate with management. They have been instrumental in improving corporate governance, such as requiring that independent directors make up at least a majority of corporate boards. Shareholders submit proposals on emerging risks, such as cybersecurity and consumer data protection.

I also worry that the SEC may respond to pressure from companies that do not like dealing with shareholder proposals and raise the threshold on its own.

Do you think shareholders should have a voice in the companies they own?

A.1. Yes. My research, teaching, and previous Government service have long focused on making sure that investors have the tools they need to express their views to corporate management. As I noted in my testimony, for example, I am especially proud to have worked on the Treasury Department's proposals to give shareholders a voice on executive pay. Giving investors the ability to express their views help hold management's feet to the fire, demanding accountability on issues that shareholders believe are important to the success of the company.

The SEC's shareholder-proposal process has, for decades, encouraged helpful dialogue between managers and investors in just this way. That process allows shareholders to guide management on what they believe the right direction is for the company—almost always on a nonbinding basis. While I am open to the possibility that those rules, which have not been revisited for some time, might be modernized, my focus during any such process will be to ensure that the rules encourage investors to express their views to corporate management. Corporate accountability is critical to the future of our companies and the economy, and I am deeply skeptical of making changes to these rules that would make it harder for shareholders' voices to be heard.

Q.2. Do you think it would a problem if the threshold for submitting proposals was set so high that it blocked all but the biggest and wealthiest shareholders from submitting proposals?

A.2. Yes. I would have serious concerns regarding any proposal to limit shareholder proposals only to the largest or wealthiest investors. The shareholder proposal rules are shareholders' best opportunity to have a dialogue with the company and to bring forth ideas and proposals to management. Limiting that process to the largest or wealthiest shareholders would deprive American companies of the views of their owners and reduce management's accountability to shareholders—steps that make little sense for an agency charged with protecting investors.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM ROBERT J. JACKSON, JR.

Q.1. If confirmed, what specific steps would you take to bolster individual executive accountability, consistent with what Chairman Clayton has advocated for?

A.1. I believe that holding executives accountable when they violate the law is critical to maintaining trust in our financial system. Specifically, there are at least two areas that deserve greater time and attention.

First, I will make certain that in any particular case the Division of Enforcement has explored every alternative related to bringing proceedings against responsible individuals—not just companies. Although I cannot at this time comment on any particular enforcement matter that may come before me as a Commissioner, I assure you that, where the Division of Enforcement recommends action against a company but not responsible individuals, if confirmed my first question will be to ask what can be done to ensure that corporate insiders are held accountable for their actions.

Second, I will urge Chairman Clayton and my fellow Commissioners to adopt the rules mandated by Section 954 of the Dodd–Frank Act, which require public companies to develop policies regarding the clawback of executive compensation. Those rules would help ensure that executives do not reap financial rewards while making decisions that harm American investors. As I mentioned during the hearing, 7 years after the passage of Dodd–Frank, it is time for the Commission to finalize the rules that Congress mandated in that law. That's especially true for Dodd–Frank's clawback rules—which would help hold corporate executives personally accountable for causing harm to American investors.

Q.2. Some observers like to point to the Sarbanes–Oxley Act of 2002 or the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 as to why there's been a drop in public companies since the mid-1990s. But a flood of private capital since that time has caused merger and acquisitions (M&A) activity to surge. Bankers enjoy the fees that industry consolidation brings in, and with an average CEO tenure of 3 years, executives benefit from a short-term boost in stock prices. On top of that, Congress has passed legislation such as the JOBS Act, which makes it easier for companies to stay private for longer.

What do you make of this argument that regulations are to blame for a drop in public company formation? Or is it more likely that a whole set of public policy choices make it easier for incumbent firms to buy-up innovative start-ups, and make it easier for private companies to stay that way for longer?

A.2. There are many explanations for recent changes in the number of public companies, and all of them deserve the SEC's attention. For one thing, the emergence of deeper and more robust private capital markets than we have ever had before allows large companies to stay private for far longer than they once could. For another, the capital-markets fees that a company must pay to go public are far higher in the United States than in other markets, giving entrepreneurs pause before listing their shares. And extensive acquisition activity over the past two decades has worked to combine thousands of public companies, reducing the number of listings on American exchanges.

American capital markets can and should remain the envy of the world. Chairman Clayton has made clear that this area is a priority for him, and if confirmed, I would work closely with the Chairman, my fellow Commissioners, and the Staff to ensure that the Commission takes the steps necessary to keep our capital markets competitive.

Q.3. What about the fact that investment banks' fees to underwrite initial public offerings has consistently clustered at seven percent over many decades? Why hasn't competition driven down the price to take young companies public, and if confirmed, will you seek to study this issue?

A.3. The fees bankers earn for taking companies public are higher in the United States than in most other jurisdictions, and these fees are often the most important factor in the decision to go public. Scholars have long noted that investment banker fees have clustered around seven percent for a wide range of companies over a period of decades.[1] The fact that American entrepreneurs are required to give up some seven percent of their creation in order to take their companies public seems to me to be an important factor in any assessment of the changing rates of IPOs in our markets.

To be sure, there are many reasons why companies choose not to go public today, and they all deserve attention—including the factors described in your question. If confirmed, I would look forward to working with your office to study this issue further—and take whatever actions are necessary to ensure that America's capital markets remain competitive.

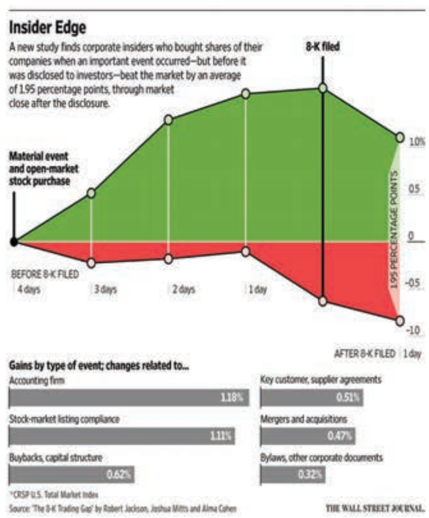
[1] See, e.g., Hsuan-Chi Chen and Jay R. Ritter, "The Seven Percent Solution", 55 *J. Fin.* 1105 (2000) ("Investment bankers readily admit that the IPO business is very profitable, and that they avoid competing on fees because they don't want to turn it into a commodity business.").

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

WALL STREET JOURNAL **ARTICLE SUBMITTED BY SENATOR VAN HOLLEN**

Insiders Beat Market Before Event Disclosure: Study

Researchers from Columbia, Harvard find small but persistent edge



Wall Street Journal
By
Liz Hoffman
Sept. 14, 2015 9:23 p.m. ET
13 COMMENTS

Corporate executives and board members regularly make market-beating returns from buying and selling their companies' stock in the days before disclosing a significant event, according to a study that says it has found a link between insider knowledge and investment profits.

Researchers at Columbia and Harvard universities analyzed 42,820 insider purchases and sales reported by companies between 2004 and 2014. All occurred within the four business days the Securities and Exchange Commission gives companies to disclose major developments.

While few scored the eye-popping returns that often attract the attention of regulators, the researchers found that they notched a small but persistent edge. On average, the officials netted about 0.4 percentage point over a broad market index between the time of their trades and the market close after the disclosure. These gains, realized over the span of a few days, would be much larger on an annualized basis.

When officials bought shares outright—rather than by exercising options received as compensation—the gains were even better, at about 1.6 percentage points over the index. Open-market purchases are noteworthy because corporate executives, who typically receive chunks of stock through salaries and bonuses, are often less inclined to buy shares out of pocket.

The longer companies waited to make disclosures, the better the returns, according to the study. When companies used the full four-business-day window, the average excess profit rose to 1.95 percentage points.

Related

Securities laws require companies to disclose major developments on SEC forms known as 8-Ks, which cover everything from new credit agreements to acquisitions and dividend announcements. Insiders aren't explicitly banned from trading ahead of these announcements but, as with other times, can't do so if they possess market-moving information unknown to other investors. What constitutes such information is a matter of debate in some cases.

The findings wade into a long-running debate over whether U.S. securities laws, many of them decades old, can effectively police a trading market that has grown ever faster and more complex. Critics say the lag time allowed by current disclosure rules is a relic of an era before electronic filings and is ripe for abuse.

"To leave open a gap like that is an invitation to insider trading," said Robert Jackson, a Columbia Law School professor who co-wrote the study with his colleague Joshua Mitts and Alma Cohen of Harvard.

It isn't clear that the officials, particularly less-senior ones, were aware of the developments disclosed or knew which direction they were likely to move the stock. In some cases, the information may have been made public before the 8-K, by other means. But the consistency of the profits suggests insiders benefit from proprietary knowledge of their businesses when making trades, Mr. Jackson said.

The study adds to a body of academic and other work that has made similar findings. A Wall Street Journal investigation in 2012 found that many executives reaped robust gains when they traded ahead of major announcements.

The latest study excluded any filings that noted the trades in question were made pursuant to so-called 10b5-1 plans. They are pre-established arrangements under which executives can schedule trades for particular times or price triggers. Executives don't have to disclose these plans but often do so on their trading forms, which can serve as a strong defense against any allegations of impropriety.

Wausau Paper Corp. on Aug. 13, 2014, finalized the sale of a long-shuttered Minnesota plant that had proved difficult to unload. On Aug. 18, Chairman and Chief Executive Michael Burandt bought 3,000 shares of Wausau stock, his first stock ownership since taking the job four months earlier. After the sale was disclosed to investors on Aug. 19, the shares rose and Mr. Burandt earned a paper profit that beat the market index by two percentage points, the study found. A Wausau spokesman said Mr. Burandt believed the shares, which had fallen sharply in the prior months, were undervalued. He added that Wausau executives had just been allowed to resume trading after being barred from doing so around the company's second-quarter earnings.

In another example, Simmons First National Corp., a small Arkansas bank, moved in August 2012 to buy back $10 million in trust-preferred securities, lowering its overall debt. Then-CEO Thomas May bought 3,000 shares in between when Simmons notified the trustee of its plan and when it disclosed the news. The study's authors calculate an excess return of 1.1% over two days.

A Simmons spokesman declined to comment. Mr. May, who retired in 2013, didn't respond to a request for comment.

Rep. Carolyn Maloney, D., N.Y.., who sits on the House Financial Services Committee and reviewed the latest study's findings, called them "troubling" and said she was preparing legislation to address the issue. Her office is considering several options, including a bill preventing executives from trading their own company's shares ahead of an 8-K filing.

The headquarters building of the SEC. Photo: Joshua Roberts/Bloomberg News

The SEC in 2002 proposed shortening the 8-K filing window to two business days from between five and 15 but backed off amid resistance from corporate law firms, among others, who said it would burden companies, especially smaller ones with fewer resources, and lead to rushed, inaccurate disclosures. The agency settled on four days.

“Companies often need, and do use, that time to make sure the information is accurate,” said Bradley Bondi, a lawyer at Cahill Gordon & Reindel LLP who was previously an SEC enforcement official. Shortening the window could lead to errors or sloppily worded filings that could invite shareholder lawsuits, he said: “The main consumer of 8-Ks isn’t the investing public—it is the plaintiffs bar.”

He said an alternative may be tougher enforcement of laws already on the books. “This isn’t a problem with the law,” he said.

Write to Liz Hoffman at liz.hoffman@wsj.com

"THE 8-K TRADING GAP" SUBMITTED BY SENATOR VAN HOLLEN

The Center for Law and Economic Studies
Columbia University School of Law
435 West 116th Street
New York, NY 10027-7201

(212) 854-3739

The 8-K Trading Gap

Alma Cohen
Harvard Law School

Robert J. Jackson, Jr.
Columbia Law School

Joshua R. Mitts
Columbia Law School
Columbia Business School

For a visualization tool describing specific cases from the data examined in this Article, please visit http://bj1.law.columbia.edu/8kgap

Working Paper No. 524

September 7, 2015

An index to the working papers in the Columbia Law School Working Paper Series is located at
http://web.law.columbia.edu/law-economic-studies/working-papers

The 8-K Trading Gap

Alma Cohen[*]
Harvard Law School

Robert J. Jackson, Jr.
Columbia Law School

Joshua R. Mitts
Columbia Law School & Columbia Business School

September 7, 2015

ABSTRACT

When a significant event occurs at a publicly traded company, federal law requires the firm to disclose this information to investors in a securities filing known as a Form 8-K. But the firm need not disclose immediately; instead, SEC rules give companies four business days after the event occurs within which to file an 8-K. These rules thus create a period during which market-moving information is known by those inside the firm but not most public-company investors—a period we call the "8-K trading gap." In this Article, we study how corporate insiders trade their company's stock during the 8-K trading gap.

We develop a unique dataset of 15,419 Form 8-Ks with trades by insiders during this gap. We identify systematic abnormal returns of 42 basis points on average, per trade, from trades by insiders during the 8-K gap. When insiders engage in an unusual transaction during the gap—open-market purchases of their own company's stock—they earn even larger abnormal returns of 163 basis points. We also show that, when they engage in such purchases, insiders are correct about the directional impact of the 8-K filing more often than not—and that the probability that this finding is the product of random chance is virtually zero.

To examine whether it is the expertise of the insiders, or the value of the information, that drives insider returns, we then focus on a type of 8-K that reveals positive information: those that announce new agreements with the company's business partners. We show, without reference to any specific insider transaction, that a trading strategy of buying on the date such an agreement is struck and selling immediately before the agreement is disclosed yields, on average, abnormal returns of 35.4 basis points. We also demonstrate that insiders are more likely to engage in open-market purchases of their own company's stock when the firm is about to reveal new agreements with customers and suppliers. In light of the potential concerns raised by these findings, lawmakers should reconsider the effects of information-forcing rules such as those governing Form 8-K on the incidence and profitability of trading by insiders.

---

[*] Alma Cohen is at Harvard Law School. Robert J. Jackson, Jr. is Professor of Law and Co-Director of the Ira M. Millstein Center for Global Markets and Corporate Ownership at Columbia Law School. Joshua R. Mitts is Postdoctoral Fellow in Empirical Law and Economics at Columbia Law School and a Ph.D. student in Finance & Economics at Columbia Business School. We wish to express our deep gratitude to Gregory Klochkoff, Kate Thompson, Zack Nagler, Derek Sanz, Eliana Torrado, James Davidson, Bill Nguyen, and Matthew Weiner for their critical work on this project. We also thank Ian Ayres, Lucian Bebchuk, Jeffrey Gordon, Zohar Goshen, Alex Raskolnikov, Gabriel Rauterberg, Richard Squire, and Eric Talley for helpful comments. Direct correspondence to alcohen@law.harvard.edu, robert.jackson@law.columbia.edu and joshua.mitts@law.columbia.edu.

1. INTRODUCTION

Trading by corporate insiders has long been the subject of heated debate among lawmakers and commentators. Although Manne (1965) forcefully questioned whether the law should allow such trading, for more than sixty years the Securities and Exchange Commission (SEC) has devoted significant resources toward enforcing the rules designed to reduce insiders' profits from trading in their company's stock. The precise contours of those rules can be difficult to discern.[1] What is clear, however, is that SEC Rule 10b-5, the principal source of liability for improper trading, prohibits an insider from trading with those to whom she owes a fiduciary duty on the basis of so-called material nonpublic information. Another group of SEC rules govern whether and when public companies must disclose this kind of information to the public. While a significant body of work has examined insider trading more generally, relatively little attention has been given to the interaction between these information-forcing rules and insider trading.

In this Article, we examine a unique type of trading by corporate insiders: trading during the period when SEC rules allow companies to delay the public disclosure of significant corporate events. When such an event occurs, SEC rules require that the firm disclose it in a securities filing known as Form 8-K. But those rules do not require the 8-K to be filed until the fourth business day after the event. Thus, SEC rules create a period when market-moving information is known by insiders but not by most investors—a period we call the "8-K trading gap." In this Article, we provide the first study of how insiders trade their company's stock during the 8-K trading gap.

---

[1] Among other issues clouding the scope of insider-trading liability, a recent Second Circuit decision raises substantial questions about the proof required to sustain a conviction for violations of Rule 10b-5 against outsiders who receive confidential corporate information from insiders. The United States recently petitioned the Supreme Court to review the Second Circuit's decision. (Stevenson & Goldstein, 2015.)

After identifying more than 15,000 8-Ks with trades by the company's insiders during the 8-K gap, we examine the profitability of those trades based on the direction of the insiders' transactions. We show that insiders enjoy systematic abnormal returns of 42.3 basis points on average per trade. We then review each 8-K by hand to identify the type of corporate event that will be disclosed by the firm shortly after these trades. We document abnormal returns from the insiders' transactions across a wide range of types of information—including forthcoming details of merger agreements, changes in the company's capital structure, key customer or supplier agreements, and notices of stock-listing compliance violations.

Having documented these profits, we then address a possible concern. The results described above show only that insiders do, in fact, trade profitably during the 8-K gap—a finding that some might regard as unsurprising given insiders' deep information about the firm and its value. Put another way, one might expect that insiders, when they trade their own company's stock, consistently turn a profit—regardless whether an 8-K filing is imminent. We thus examine whether an individual who knew *only* about the forthcoming 8-K filing, but had no other access to non-public information about the firm, could trade profitably during the 8-K gap. To answer that question, we focus on a particular type of 8-K that is on average likely to generate a positive response in share prices: the announcement of a significant agreement with the company's customers or suppliers.[2] Abstracting away from particular transactions by insiders, we show that a simple trading strategy—buying on the date when such an agreement is struck and selling on the date when that agreement is disclosed to the public—would yield abnormal returns of about 35.4 basis points. Thus, a person who knew only that the company had signed

[2] As explained in further detail below, because SEC rules governing Form 8-K require that companies disclose when the firm enters into significant new agreements with customers and suppliers. Because such agreements are, on balance, designed to increase rather than decrease firm value, those rules are likely, on average, to produce positive information about the value of the firm.

such an agreement could earn abnormal profits using this strategy. Finally, we consider whether insiders are more likely to engage in a relatively unusual[3] transaction—the open-market purchase of their own company's stock—between the time major agreements with customers or suppliers are struck and when those agreements are disclosed. We find that insiders are more than 20% more likely to engage in open-market purchases during this period than at other times.

Because these findings raise concerns about trading by corporate insiders, we wish to add four cautionary notes regarding the interpretation of our results. First, we emphasize that our evidence in no way establishes that the insiders in our sample have engaged in illegal or improper conduct. As noted above, the contours of the law governing liability under Rule 10b-5 are complex, and the elements of such liability require a showing of certain facts, such as the insider's state of mind, upon which our evidence does not bear. Second, we note that our evidence does not establish the causal direction of the relationship between the 8-K gap and trading by insiders. It may be that insiders delay 8-K disclosures to create trading opportunities (Niessner, 2015), or that insiders aware that an 8-K will not be filed for several days choose to trade before the filing occurs. Because the design of our study is not experimental, we are unable to distinguish between these hypotheses. Third, and relatedly, because our design is not experimental, our evidence does not show that profitable trading by insiders is *caused* by the 8-K gap. We simply document that insiders do, in fact, trade profitably during the gap—not that the gap causes greater levels of insider profits.

[3] It is relatively rare for insiders to engage in open-market purchases—as compared, for example, to the exercise of stock options or sale of company stock—because insiders already have, as a consequence of their employment by the company, undiversified exposure to the firm and its fortunes, making additional long exposure generally undesirable for insiders (Jensen & Meckling, 1976). Following the conclusion of previous work that "insiders are overinvested in their firms due to the level of personal wealth and human capital invested" (Rogers, 2008), and hence that insiders' open-market purchases are likely to be more predictive of future returns than insider sales (e.g., Seyhun, 1986) we examine open-market purchases especially closely in our analyses below.

Finally, we caution that corporate events are communicated to the public in many ways. Our focus is on trading that occurs after the event but before the information is disclosed on Form 8-K. We do not address the possibility that, in any particular case, the information disclosed in a Form 8-K was made public before the 8-K was filed—for example, through conversations between corporate management and the press. We note, however, that despite this possibility the consistent abnormal returns to insiders' transactions in the 8-K gap documented in this Article might still raise concerns for policymakers. The reason is that, on balance, we would not expect trading prior to the revelation of already-public information to generate consistently economically and statistically significant abnormal returns of the kind we observe in the data. The fact that such returns exist suggests that not all of the information disclosed in the 8-Ks we study was already public at the time of the insiders' transactions.

Our study provides several novel contributions to previous work in this area. First, although extensive previous work in the finance literature examines the returns to trading by insiders (e.g., Seyhun, 2000), little work in this area has emphasized the relationship between such trading and the information-forcing rules that form the bedrock of securities law. We document returns to insiders' transactions conditional on the current choices reflected in SEC rules about the timing of disclosure of corporate events to the public. Second, unlike much prior work in this area (for an important exception, see Meulbroek, 1992), we document how insiders' returns differ among the different types of information that the firm is about to reveal—and, hence, provide a framework for policymakers considering whether securities rules in this area should reflect the heterogeneous nature of the information they govern. Third, we demonstrate that profits from the 8-K trading gap do not require the unusually deep information that insiders have about the firm; instead, even a relatively uninformed investor can earn systematic abnormal profits by knowing about particular types of corporate developments before the market does.

Finally, the evidence we present may raise concerns for policymakers. Our findings suggest that Congress and the SEC should consider whether allowing firms to delay the announcement of material nonpublic information for four days creates trading opportunities that strain the already significant public resources dedicated to enforcing the rules that prohibit improper trading by insiders. Second, firms hoping to address the potential for such trading often voluntarily adopt so-called "blackout" periods prohibiting insiders from transacting in the company's stock around the time of quarterly earnings announcements. But these prohibitions often do not apply to other significant events reportable on Form 8-K, and our results suggest that firms should consider extending blackout periods to those events. Finally, our evidence suggests that policymakers currently considering choices regarding the design of information-forcing rules—such as those that govern Form 8-K—should consider the effects of those choices on the opportunities for trading by insiders.

The remainder of the Article proceeds as follows. Part 2 provides background on previous study of trading by corporate insiders and the SEC rules that we use to identify the 8-K trading gap. Part 3 describes the development of our dataset and the results of our analysis of insider profits from trading in the 8-K gap. To address potential critiques of that analysis, in Part 4 we focus on trading in the gap when the 8-K will reveal a particular type of information: significant agreements between the company and its customers or suppliers. Part 5 concludes.

2. BACKGROUND

A. Mandatory Disclosure Rules and Trading by Insiders

The standard justification for the mandatory disclosure rules that characterize much modern securities law is that, in the absence of such rules, information about the value of securities would be underprovided from a social point of view. (Coffee, 1984.) Indeed, it has been said that the "essen[ce]" of these rules is to facilitate the work of informed traders so that stock prices accurately reflect the collective value of the firm's investment opportunities. (Goshen & Parchomovsky, 2006.) While Manne (1965) contended that profitable trading by insiders, too, could help improve the accuracy of public-company stock prices, the law has taken a different course: insider trading on the basis of material nonpublic information is, broadly speaking, illegal. Because enforcement of that prohibition is imperfect, however, previous work has documented profitable trading by corporate insiders rather extensively (e.g., Lorie and Niederhoffer, 1968; Jaffe, 1974).

Less noticed is the relationship *between* the design of mandatory disclosure rules and the incidence and profitability of insider transactions in their own companies' stocks. Theoretically, however, we would expect that the design of information-forcing rules will profoundly influence insiders' behavior, both as traders and as managers of the firm itself. Suppose, for example, that a manager is presented with the opportunity to enter into a new agreement on behalf of the company that, in expectation, will significantly increase the firm's value. Suppose, too, that policymakers wish to choose the mandatory-disclosure rule that will most efficiently transmit the value implications of this development to securities markets. Lawmakers have a wide range of choices in designing this rule, but all can be expected to influence the manager's behavior. Consider, for example, a rule requiring the firm to disclose the agreement at the moment that the manager signs the relevant contract. Managers inclined to profit from their information may seek to delay that moment to enable profitable trading, with correspondent implications for social welfare. By contrast, consider a rule that requires the firm to disclose the agreement one month after signing. This design is less likely to influence the manager's conduct regarding the agreement itself. But it is also likely to permit considerable trading by the insider on the basis of this information—again, with correspondent social costs.

To choose among these design alternatives, however, policymakers need evidence regarding the costs and benefits of the existing regulatory regime.[4] In this Article, we examine trading activity by corporate insiders that is associated with the current regulatory design of the SEC rules that require public companies to disclose significant corporate events to investors.[5]

B. The SEC's 8-K and Insider-Trading Disclosure Rules

In this Article, we take advantage of two types of securities-law rules to provide unique evidence on insider transactions in public-company stocks. First, we consider rules that require publicly traded companies to disclose important corporate events to investors on Form 8-K. Second, we draw upon rules that require insiders to disclose their trades to the public in a filing known as Form 4 to examine trading during the 8-K gap.

---

[4] Indeed, a related recent debate in corporate and securities law—regarding the optimal disclosure rule for holders of large blocks of public-company stock—draws on similar questions of institutional design. Although current law permits blockholders of 5% or more to wait as long as ten days before disclosing their position, the SEC is currently considering a petition to shorten that period to one day. (Wachtell, Lipton, Rosen & Katz, 2011.) In previous work, one of us has argued that the design of that rule implicates certain benefits associated with such blockholders. (Bebchuk & Jackson, 2012.) Another one of us has argued that lawmakers should take advantage of the benefits of private ordering when developing such rules. (Mitts 2013.) That work, like this Article, examines the costs and benefits of the design choices reflected in current securities law.

[5] Although most work in this area has not emphasized the relationship between these design choices and trading by corporate insiders, one important body of prior scholarship *has* explored that interaction. In a series of recent papers, commentators have considered whether the design of SEC Rule 10b5-1—which provides that, if insiders adopt a "plan" under which they precommit to certain transactions, those trades will be presumed not to violate Rule 10b5—has actually led to *more*, rather than less, insider-trading profits (Henderson et al., 2014; Jagolinzer, 2009).

The SEC rules governing Form 8-K are nearly as old as the Commission itself. Form 8-K was created by the Commission in 1936 "as the form to be used by companies to file 'current' reports when specific extraordinary corporate events occur.'" (SEC, 2002.) The SEC's initial rules for Form 8-K allowed companies to file the Form up to ten days after the end of the month in which the extraordinary event occurred—that is, as many as forty days later in some cases. In 1977, however, the Commission amended these rules to require companies to file an 8-K within five business days of such an event. The Commission also amended its rules, over time, to require firms to file a Form 8-K for a broader group of corporate events; in securities-law parlance, the various events that are subject to 8-K disclosure are referred to as "Items".[6]

In 2002, however, in the wake of the Enron and WorldCom scandals, Congress passed the Sarbanes-Oxley Act. That law included a little-known provision, Section 409, indicating that publicly traded corporations should be "required to disclose to the public, on an urgent basis, information on material changes in their financial conditions or operations." The SEC proposed extensive changes to its 8-K rules in 2002. For present purposes, the most important proposed change was to "shorten the filing deadline for Form 8-K to two business days after an event triggering the Form's disclosure requirements." (SEC, 2002.) But the Commission received extensive comments from, among others, prominent law firms and investment banks urging the SEC to reconsider. Finally, in 2004, the SEC decided not to adopt its proposed two-day deadline; instead, "persuaded by . . . these commenters," the Commission chose to mandate "a four business day deadline for Form 8-K." (SEC, 2004.)[7] This SEC rule makes it possible, and indeed

[6] For example, as described in further detail below, Item 1.03 on Form 8-K requires disclosure of whether the company has entered into bankruptcy or receivership, Item 2.01 requires disclosure of the completion of the acquisition or sale of corporate assets, and Item 3.01 requires disclosure of the company's receipt of a notice that it has failed to satisfy the listing rules of a stock exchange on which the firm's securities are listed. (SEC, 2015 (1).)

[7] Because the SEC's rules governing Form 8-K changed significantly in the years preceding 2004, we consider only trading activity in 2004 and later in our empirical analysis below.

perfectly legal, for there to be a gap of as many as four trading days between the occurrence of a significant corporate event and the disclosure of that event to the company's investors.

SEC rules have also required disclosure of trading by corporate insiders since the Great Depression. These rules require a public company's directors and officers to disclose the dates, prices, and other details of their trades in the company's stock on Form 4.[8] Although the SEC's rules once required Form 4 to be filed within 10 days of the end of each month, Congress also altered these rules in the Sarbanes-Oxley Act. This time, Congress did not leave the SEC discretion with respect to the filing deadline: with few exceptions, Section 403(b) of Sarbanes-Oxley strictly requires that Form 4 be filed within two business days of the insider's transaction.

Although extensive previous work has used the rich data provided in Form 4 to study[9] trading by insiders,[10] relatively little attention has been given to the SEC's 8-K rules. One recent working paper (Niessner, 2015) considers whether managers use the flexibility provided by the 8-K gap to strategically time the release of negative news, finding that managers are more likely to disclose such news on Fridays and before national holidays. Although that paper considers the relationship between strategic timing of disclosures and insiders' sales of their company's stock,

[8] The SEC rules governing Form 4, promulgated under Section 16(a) of the Securities Exchange Act of 1934 also apply to beneficial owners of 10% of the company's stock. Although we do not examine the trading behavior of 10% holders during the 8-K gap in this Article, we intend to explore such trading in future work.

[9] For examples from the finance literature, see Lorie and Niederhoffer (1968), Jaffe (1974), Seyhun (1986), and Ivashina and Sun (2011). Form 4 data have also been used extensively in empirical work on insider trading in the legal literature; for examples, see Henderson et al. (2014) and Jagolinzer (2009). Following much of this previous work, as described below we obtain Form 4 data from the Thomson Reuters database.

[10] We agree, of course, with the well-known previous work concluding that studying trading by insiders through Form 4 data is of limited use because "corporate insiders . . . would most likely refrain from reporting [insider trading that violates Rule 10b-5] to the SEC" on Form 4 (Muelbroek, 1992). Nevertheless, for two reasons we follow prior literature (e.g., Seyhun, 1986) that studies trading that is disclosed by insiders on Form 4. First, insider transactions during the 8-K gap may be of particular interest because we can directly observe the content of the information disclosed immediately following the insider's trade. Second, our identification of thousands of Form 4 disclosures detailing trading by insiders during the 8-K gap—trades that, virtually by definition, immediately precede the revelation of material nonpublic information—may raise concerns for policymakers.

the study's focus is on the timing of disclosures rather than trading by insiders. In the next Part, we present the first evidence on trading by corporate insiders during the 8-K gap.

3. TRADING BY CORPORATE INSIDERS DURING THE 8-K GAP

A. Data

We begin by collecting 701,905 Form 8-Ks filed with the SEC from January 1, 2004 to December 31, 2014 by 9,303 companies with ticker symbols registered with the Center for Research on Security Prices ("CRSP"). In light of the seriousness of the potential implications associated with managers' trading during the 8-K trading gap, we took an unusually conservative approach to generating our dataset, excluding from this study a number of 8-K filings and trades by insiders that we intend to examine in future work.

First, we remove any filing disclosing an event reportable under Item 5.02 under the SEC's Form 8-K rules, as these events generally refer to stock or option awards granted to the company's management.[11] We then remove any 8-K disclosing an event under Item 5.07 under the SEC's 8-K rules, because these report the results of shareholder votes at annual meetings—which are both unlikely to be material and likely to have been disclosed, at least in part, at the meeting itself. We next remove any 8-K that contains the phrase "underwriting" or "unregistered," as these likely reflect private securities transactions beyond the scope of our study. We then remove any Form 8-K that refers to a so-called "trading plan" pursuant to SEC Rule 10b5-1, as these plans typically call for prescheduled insider transactions and under SEC

[11] Nevertheless, the timing of such grants, and the post-grant returns that managers enjoy, provide an interesting subject for further study, as shown in important recent work by Daines et al. (2015). That study provides evidence consistent with the notion that executives manipulate stock prices to increase the value of their option compensation. The 8-K gap provides one channel through which this manipulation may occur. We intend to examine the timing of stock-compensation grants, and the filing of Form 8-Ks announcing those grants, in future work.

rules their adoption generates a presumption against illegal trading.[12] Finally, we follow Niessner (2015) and also remove from our dataset any Form 8-K reporting events in Item 1.03 (bankruptcy or receivership), as these can be anticipated in advance; Item 2.02 (earnings announcements), as these are prescheduled and often subject to blackout periods voluntarily imposed by some firms; and Item 7.01 (Regulation FD), which has a 24-hour reporting period.[13] We further reduced the sample to those 8-K filings made on trading days by filers with available market capitalization data on CRSP. These filters yield a sample of 169,616 Form 8-K filings by 5,246 filers.

For each of these filings, we utilize the Form 8-K SEC-provided "Filing Date" as the date on which the information is disclosed to the public.[14] However, we recognize that in some cases the underlying information may become public prior to the filing of the Form 8-K, either through

[12] While this filter allows us to address the *announcement* of a 10b5-1 plan, we cannot exclude all *trades* that are claimed by the insider or the company to be pursuant to a 10b5-1 plan. The reason is that, although some firms assert in footnotes on Form 4 that a particular trade was executed pursuant to such a plan, such disclosures are voluntary and hence likely to be biased on the bases of firm or individual characteristics (Henderson et al., 2014; Niessner, 2015). For three reasons, however, the presence of transactions pursuant to 10b5-1 plans is unlikely to affect our results. First, as to our calculations of the profits insiders earn through trading, in expectation trades under predetermined trading plans should not be abnormally profitable, and hence should have no effect on our calculations. Second, the most profitable insider transaction that we study—open-market purchases—are unaffected by 10b5-1 plans, since those plans overwhelmingly call for prescheduled *sales*, rather than purchases, of company stock (Jagolinzer, 2009). Finally, previous work has cast doubt on the notion that trades pursuant to 10b5-1 plans are truly uninformed, noting that (1) many insider sales occur very shortly after the plan is established, (2) some plans consist of a single insider sale, and (3) companies appear to selectively terminate these plans early or cancel individual insider sales, Jagolinzer (2009); Robbins (2010); Shon and Veliotis (2013). To the extent that, as this work suggests, trades pursuant to 10b5-1 plans are *not* truly uninformed, their presence in our dataset is appropriate.

[13] All of the filters described in the text are applied by excluding any Form 8-K filing that contains the text "1.03", "2.02", "5.02", "5.07", "7.01", "underwriting", "unregistered", or "10b5-1". These filters are applied to the text of the Form 8-K filing itself, excluding attachments. The filtering does not prefix the search with "Item" or another phrase, as this can be unreliable due to the structure of text in Form 8-K filings. Very few Form 8-Ks should be erroneously discarded from our dataset using this method.

[14] For filings posted after 5:30pm, the SEC's EDGAR system automatically adjusts the filing date to the following date; for filings posted between 4:00pm and 5:30pm, the EDGAR system records the filing date as the actual date of filing (SEC, 2015 (2)). The closing prices used throughout this study are established when markets close at 4:00 pm. Thus, for filings posted between 4:00pm and 5:30pm, the filing date accurately corresponds to the trading day on which the market learns the disclosed information—that is, the trading day immediately following the filing date. In previous work, two of us showed that a significant number of filings is posted to EDGAR between 4:00pm and 5:30 pm (Jackson, Jiang, and Mitts, 2014), providing support for this choice.

a press release by the firm or news coverage. We therefore scan the text of each Form 8-K for the phrase "press release" and, if this phrase is present, we extract the nearest proximate date and utilize this date as the date of public disclosure instead of the Form 8-K filing date if the former precedes the latter.[15] While we are unable to perform a similar procedure for news coverage more generally—or to address the possibility that the firm has previously voluntarily disclosed the information, for example on its website—we emphasize that in the absence of systematic investor biases, information that has already been made public should not present profitable trading opportunities. Thus, to the extent that information becomes public before the 8-K is filed, the expected trading profit for trades in the 8-K gap should approach zero in expectation. Our finding that insiders enjoy systematic profits when trading in the 8-K gap is therefore inconsistent with the notion that the information contained in the 8-Ks we study has systematically already been made public.

We determine the date of the actual corporate event disclosed in the 8-K by electronically parsing the text in the Form 8-K, which contains this information.[16] We compute the gap between the actual event date and the date the 8-K is filed as the number of trading days between the former and the latter. In the case of an event date that is not a trading day, we utilize the immediately preceding trading day.[17] We drop gaps greater than five trading days, as these likely reflect exceptional circumstances in which the SEC's standard four-business-day rule may

[15] Due to variations in 8-K text, this method may not perfectly address all cases involving a press release. In unreported analysis, however, we estimate that this algorithm captures more than 99% of such cases.

[16] This information, known as the "Conformed Period of Report," is included in the EDGAR file header and is provided by the firm. (SEC 2015(3)). We manually reviewed several Form 8-K filings and confirmed that this header matches the date listed in the body of the 8-K itself.

[17] In the case of multiple Form 8-K filings on the same date, we utilize the greatest gap among the Form 8-K filings.

not apply, as well as any gaps less than zero, which could occur if a firm files the Form 8-K prior to the occurrence of the underlying event.

This process yields a final sample of 164,314 Form 8-K filings by 5,231 public companies over our 10-year sample. The following table shows the distribution of firms in each year of our dataset, along with the average number of Form 8-Ks filed by firms over that time:

[Insert Table 1 Here.]

As the table shows, the number of firms in our dataset is relatively stable per year; variation in the overall number is driven by the emergence and disappearance of firms over time. Concerns of survivorship bias do not pose a problem for our analysis because we are estimating outcomes over very short intervals of time. In addition, as Table 1 also shows, the average number of 8-Ks filed per firm in our sample fell from 2004 to 2007 and has remained relatively stable since.

We begin by considering the distribution of 8-K trading gaps in our sample. Figure 1 below describes the frequency of gap lengths among our sample of 8-K filings:

[Insert Figure 1 Here.]

As Figure 1 shows, a plurality of Form 8-K filings have no trading gap at all—that is, the firms disclose the event on the day it occurs. Among the 8-Ks that do have trading gaps, gaps of one day (that is, disclosure the day after the event) and four days (that is, the maximum gap permitted under SEC rules) are most common.

We next consider whether the distribution of the 8-K gap varies by the size of the firm as measured by market capitalization. Table 2 describes the number of 8-Ks with gaps of a particular length by each decile of market capitalization among the firms in our sample:

[Insert Table 2 Here.]

As Table 2 shows, longer 8-K gaps are far more common at smaller firms. The largest 10% of the firms in our sample file more than 50% of their 8-Ks on the same day the event occurs, and more than 70% of their 8-Ks within twenty-four hours of that event. Descriptively, these results are consistent with the intuition that larger firms enjoy the assistance of experienced attorneys. In conversations with experienced counsel with whom we shared our results, the attorneys indicated that they generally seek to minimize the gap between the occurrence of a reportable event and the disclosure of that event to the market.

We obtain information on trades disclosed by insiders on Form 4 from Thomson Reuters. Crucially, we include transactions only if they occurred in the 8-K gap: that is, we only include trades by insiders on or after the event date and before the 8-K filing date. Thus, we do not include transactions that might have occurred after the firm filed its 8-K, and we do not include trades that occur when there is no gap—that is, when the Form 8-K is filed on the same date as the underlying event.[18] We also omit trades by 10% beneficial owners, keeping only trades by corporate officers and directors in the underlying data,[19] as well as trades by firms whose stock price trades below $1.00 per share, as these stocks are likely to have artificially skewed returns.

This process yields a sample of 42,820 trades in the 8-K trading gap. The following table shows the total number of trades in the 8-K trading gap by year, as well as the average number of trades during each 8-K trading gap per year:

[Insert Table 3 Here.]

[18] This method excludes from our sample insider transactions that occur on the same day as a press release or 8-K releasing new information to the market. We exclude these transactions even though they may well have preceded the issuance of the press release or 8-K and even though recent work suggests that markets do not immediately incorporate the new information into the stock price (e.g., Niessner (2015)). For purposes of this study, we focus only on trades that unambiguously came after the disclosed corporate event and before the disclosure of that event to the market. In future work, however, we intend to consider these excluded trades more closely.

[19] To perform this filtering, we eliminate any transaction reported in the Thomson Reuters database that features a role code of "B", "BC", "BT", "OB", "H", or "DO". Although we exclude the trades of 10% beneficial owners for purposes of this study, we intend to examine outside shareholders' trades, too, more closely in future work.

As Table 3 shows, the number of insider transactions in the 8-K trading gap rose in 2006 and 2007 but has remained at relatively lower, and stable, levels since.[20] Nevertheless, insider transactions during the 8-K gap are common: in the median year in our sample, nearly 3,400 such transactions trades took place between the occurrence of a significant corporate event and its disclosure.[21]

We next consider whether trading by insiders is more common in shorter or longer 8-K gaps. Figure 2 below shows the distribution of the insider transactions in our sample according to the length of the 8-K gap in which the transaction occurred:

[Insert Figure 2 Here.]

As Figure 2 shows, a plurality of the trades in our sample occur in the longest possible gap permitted by SEC rules—that is, a gap of four trading days. Of course, given that longer gaps cover longer periods of time in which insider transactions can occur, this result is in some ways unsurprising. Nevertheless, Figure 2 documents a significantly higher incidence of trades in our sample in 8-K gaps of four days than in shorter gaps.

Having documented trading by insiders during the 8-K gap, we sought to better understand the content of the information revealed immediately after each insider's trade. We

[20] In calculating the number of trades by insiders in the 8-K gap, we accepted the data in Form 4 at face value. That is, where insiders reported more than one order on Form 4, we recorded more than one transaction—even where arguably the individual orders might have reflected a single transaction. We do so because we do not expect that cases like these—where insiders break a single transaction down into many stock orders for purposes of Form 4—are correlated with whether or not the insider transactions occur during the 8-K gap, and hence we do not expect that this phenomenon will affect our results. Of course, if it *is* the case that insiders tend to do this more often during 8-K gaps than during other periods—for example, to influence the market's interpretation of their trading behavior—that finding alone would be worth further study. We expect to consider these questions in future work.

[21] We do not intend to suggest that trading by insiders is *more* common during 8-K gap periods than during other periods. Study of that question would likely be confounded by the absence of a meaningful control period to which 8-K gap periods could be rigorously compared. Instead, we note only that we document thousands of trades by corporate insiders that occur between the date of significant corporate events and the disclosure of those events to the public. That finding will raise concerns for those who would expect that insiders generally abstain from trading immediately before the disclosure of material corporate information.

thus individually reviewed every 8-K in our sample with at least one reported trade by an insider during the 8-K trading gap. (Although recent work, such as Niessner (2015), uses 8-K "Item" numbers as a proxy for information content, we worried that this approach relies too heavily on ambiguous and inconsistent choices made by corporate counsel when determining which "Item" a particular event should be disclosed under.[22]) Thus, we classified the 15,419 Form 8-Ks with at least one reported insider transaction in the 8-K trading gap into one of fourteen substantive categories. The following table describes each of these categories:

[Insert Table 4 Here.]

The classification of the substantive content of each Form 8-K by hand allows us to consider the distribution of information in 8-Ks with trades in the gap. Table 5 below describes the number of 8-Ks in our sample in each of these fourteen information categories:

[Insert Table 5 Here.]

For the reasons described above, 8-K filings disclosing information relating to executive pay arrangements, executive stock sales, or the results of shareholder votes at annual meetings do not typically include the type of material nonpublic information we study here. For that reason, we exclude from our analysis below any Form 8-K that, in our individualized review of each of the 8-Ks in our sample, discloses information in those categories.[23]

[22] As noted above, we do rely upon 8-K "Item" numbers to exclude observations from our sample. But we were uncomfortable using those designations in our analysis of the content of the information that the 8-K will reveal. The reason is that, in conversations with experienced counsel, they expressed concern that the definitions of each 8-K "Item" under SEC rules are too malleable to reflect a reliable proxy for the information contained in the 8-K. For purposes of our research design, our worry was that choices of item designations might be correlated with omitted variables for which we cannot control, such as the company's counsel. Thus, we took a more conservative approach, reviewing each 8-K by hand for its information content. As indicated below, in the case of 8-Ks addressing matters relating to executive pay arrangements and the results of shareholder votes at annual meetings, this hand-coding work gives us additional comfort that our sample does not include 8-Ks related to those matters.

[23] Consistent with our concern, described above, that counsel use Form 8-K "Item" numbers inconsistently to describe the substance of the information that the firm will disclose, notwithstanding our exclusion of any 8-K including disclosure on Items 5.02 (executive compensation) and 5.07 (results of shareholder votes), as Table 5 shows our individualized review of the 8-Ks that survived that exclusion still included many disclosures related to

B. Profitability of Trading by Insiders During the 8-K Trading Gap

We begin by estimating the abnormal returns that insiders earn when trading during the 8-K gap. Before turning to those estimates, two caveats are in order. First, we emphasize that our analysis reflects only approximations of such profits; for many reasons, the insiders in our study may not have actually taken the dollar profits that we describe. One reason is that Section 16(b) of the Securities Exchange Act of 1934 prohibits insiders from retaining profits from so-called "short-swing" trading—that is, trades in opposite directions within six months of each other. Under Section 16(b), if insiders conduct a purchase following a sale, or a sale following a purchase, during a six-month period, any profits from those transactions must be disgorged to the firm.[24] Thus, the insiders we study could not immediately realize the profits we calculate here under Section 16(b). In this analysis, like prior work, we do not consider whether and how insiders might exit from the positions we describe. Instead, we simply estimate how much better, on the margin, the insiders in our dataset do by buying or selling their own company's stock rather than the broader stock market.

Second—and, perhaps, somewhat surprisingly—we do not utilize the transaction price as it is reported on Form 4. There are several reasons why. First, because Form 4 disclosures do not include the precise time of day when the insider's transaction was executed, it is not possible to calculate a comparable market return for these trades when using the reported transaction price. Second, it is unclear how reliable self-reported transaction-price data are; they are occasionally missing from the Thomson Reuters dataset and may feature self-reporting bias. Thus, for each

---

those matters. Despite the disadvantages of such an individualized review in many research settings (e.g., Macey & Mitts (2014)), then, we think it is the appropriate methodology here.

[24] Of course, as previous work has noted (Schizer, 2000), this prohibition can be circumvented through hedging transactions with respect to shares of company stock purchased by the executive with her own funds.

transaction we study, we calculate the insider's abnormal return[25] from the closing price of the day of the insider's transaction to the closing price of the day following the day on which the Form 8-K filing is made, as follows:[26]

$$ar_{trade} = r_{trade} - m_{trade}$$

where r_{trade} is the return from the closing price of the day of the trade to the closing price of the day following the Form 8-K filing[27] and m_{trade} is the return on the CRSP value-weighted market index [28]over that same period.[29]

To evaluate the profitability of trading by insiders during the 8-K trading gap, we must classify trades by their direction: that is, whether the insider is effectively buying or selling her company's stock. We use the Thomson Reuters Form 4 transaction codes to determine the nature

[25] Throughout our analysis, and consistent with prior work and finance intuition, we emphasize insiders' abnormal returns—that is, the difference between the returns they earn on their company's stock and those they could earn in the market. We acknowledge, however, that some concerned about our findings may be interested in insiders' raw returns—that is, the simple returns they earn by trading in the 8-K gap. In unreported analysis, we find that insiders' raw returns are statistically and economically consistent with the abnormal returns we report throughout this Article.

[26] We present our results in this fashion because we share the view of those in the finance literature who prefer to see a straightforward regression presenting results based solely on net-of-market returns rather than the selected risk factors that have been the subject of extensive critique in finance work. That choice, we think, is especially appropriate here, where the private information returns we study are likely to be uncorrelated with risk factors. Nevertheless, as a robustness check we replicated the results described below using standard three- and four-factor risk models. The results were unchanged. In addition, in response to helpful comments from our colleagues, we also re-ran our results using an equal-weighted, rather than value-weighted, index for our market proxy. Once again, the results were unchanged.

[27] More precisely, we calculate the cumulative abnormal return by taking the sum of the daily returns for each of the days over this period. Cumulative abnormal returns (CARs) are a standard measure often used in the finance literature; as previous work has established, this approach has advantages over other methods—such as buy-and-hold returns or continuously compounded returns—also used in this area. (Mitchell & Stafford, 2000.) We use a mean-adjusted market model consistent with previous work showing that this approach performs just as well as more complex methods using risk factors. (Brown & Warner, 1980.)

[28] We use the CRSP Market Index for the combined stock-trading exchanges rather than a large-firm index, such as the S&P 500, because the firms of interest in our study are generally mid- to small-size firms.

[29] We utilize the closing price on the day of the trade to account for the possibility that prices may have updated to reflect asymmetric information as a result of the insider's informed trading on that day (e.g., Seyhun, 1986). We thus avoid imputing to the insider profits from prior days that he or she may be unable to realize. We utilize the closing price of the day following the Form 8-K filing because many form 8-Ks are filed after the market closes at 4:00pm (Jackson, Jiang, and Mitts, 2014), making the day after the Form 8-K filing the relevant day for measuring the impounding of new public information into the firm's stock price.

of the insider's transaction.[30] We then sign ar_{trade} by the directionality of the trade, utilizing $+ar_{trade}$ for positive (long) exposure and $-ar_{trade}$ for negative (short) exposure. Thus, if the insider trades in a positive (long) direction and the abnormal return is positive, the insider is "credited" with the entirety of the abnormal return for that trade. If the insider trades in a positive (long) direction and the abnormal return is negative, the insider is "penalized" with the entirety of the abnormal return for that trade. A similar analysis holds for trades by insiders in a negative (short) direction.

We begin with three preliminary statistical tests that measure how insiders perform when they trade during the 8-K gap. First, we examine whether, on average, insiders' signed ar_{trade} is significantly different from zero. Second, we consider the relationship between the length of the 8-K gap and insiders' returns from trading during the gap. Finally, we create a dummy variable for whether the insider's transaction was in an 8-K gap of longer than two days and examine the relationship between that dummy variable and signed ar_{trade}. Table 6 below reports the results of each of these three tests[31]:

[Insert Table 6 Here.]

[30] We include as "positive" exposure—that is, long exposure to the company's stock—transactions coded by Thomson Reuters as "P" (open-market purchases), "A" (grants or awards of stock or options), "F" (payment of option exercise price through withholding of shares), "M" (exercise of stock options), "C" (conversion of options), "O" (exercise of out-of-the-money options), "X" (exercise of in-the-money options), and "L" (small acquisitions of shares pursuant to option exercises). We include as "negative" exposure—that is, short exposure to the stock—transactions coded as "S" (open-market sales), "D" (forfeiture of shares pursuant to contractual provisions), "E" (expiration of a short derivative position), "H" (expiration of a long derivative position), "G" (a bona fide gift), "U" (a tender of company stock by the insider), "6" (disposition of company shares) and "7" (disposition of exercised options). We are skeptical whether transactions marked as "D" should be included as sales, although we note that insiders may be able to influence whether they forfeit stock pursuant to contractual provisions. Nevertheless, in unreported analysis we re-run the regressions below excluding "D" transactions. The results are consistent with those described throughout the Article.

[31] We estimate each model using ordinary least squares regressions with standard errors robust to heteroskedasticity.

As the results in model (1) show, trading by insiders during the 8-K trading gap yields average profits of 42.3 basis points per trade.[32] Moreover, these profits increase with the length of the gap. In a linear specification, each additional day in a gap increases insiders' average abnormal returns by 13.3 basis points. Trades in 8-K gaps longer than two trading days are 33.9 basis points more profitable than trades in gaps of two trading days or less, which average a profit of 20.2 basis points. In other words, trades during gaps of three trading days or more are associated with more than two times the average profits of trades made in gaps that are two days or less.

We next consider whether the profitability of trading by insiders during the 8-K gap is concentrated in particular types of transactions. As noted above, previous work has demonstrated that insiders' open-market purchases warrant special attention. As a theoretical matter, because insiders already have undiversified exposure to their firms, from the insider's perspective acquiring additional long exposure by using her own funds to purchase her company's stock is usually unappealing (Jensen & Meckling 1976). And, as an empirical matter, insider purchases are more predictive of future stock returns than other types of insider transactions, such as stock sales or the exercise of stock options (e.g., Seyhun, 1986). Thus, we estimate insiders' signed ar_{trade} conditional on each of the Thomson Reuters transaction codes in our dataset, i.e., $E[\text{signed } ar_{trade} \mid \text{trancode } j] = 0$, where j represents each of the transaction codes in our dataset.[33] Table 7 below describes the results:

[Insert Table 7 Here.]

[32] Some may consider these returns relatively small in light of the potential legal concerns raised by trading in the 8-K gap. We note, however, that our sample includes only *reported* trades by insiders. We also note that insiders, anticipating that they have a reporting obligation in circumstances like these, likely elect not to trade on many of the most profitable trading opportunities.

[33] We exclude from Table 7 those transaction codes consisting of fewer than 200 transactions over the eleven years in our dataset.

As Table 7 shows, and consistent with prior work, open-market purchases are by far the most profitable type of insider transaction in the 8-K trading gap, with an average abnormal return of 1.63%. In our view, these transactions are among the trades in the 8-K gap that are most likely to raise concerns. It is difficult to justify an insider increasing his exposure to the firm through open-market purchases by alternative explanations such as diversification, liquidity or compensation. The notion that insiders engage in open-market purchases in light of their information advantage seems to be a more plausible explanation for these findings.

We therefore next examine how often insiders' open-market purchases of their own company's stock are directionally correct—that is, whether these purchases precede increases in the company's stock price upon the filing of the 8-K. We find that such purchases precede stock-price increases in approximately 57% of the transactions we examine, and that the stock price is unchanged or decreases upon the filing of the 8-K in approximately 43%. While at first blush this difference may not seem substantial, in unreported analysis we run a chi-square test to measure the probability that this outcome was produced by random chance (that is, that random directional selection would produce the insider success rate that we observe). That probability (0.00000000016%) essentially approaches zero.

Finally, we investigate how insiders' profits from trading during the 8-K gap vary among eleven different types of information in our Form 8-K filings (as identified by the individualized review of the filings described above). Specifically, we test $E[\text{signed } ar_{trade} \mid \text{category } i] = 0$, where category i represents each of the eleven categories of Form 8-K filings that include material nonpublic information.[34] Results of a t-test for each category, including robust standard errors, are shown in Table 8 below:

[34] Although our individualized review of each Form 8-K resulted in dividing the filings into fourteen categories of disclosed information, as noted above three of these categories—disclosures related to executive pay, insiders' stock

[Insert Table 8 Here.]

Table 8 describes substantial heterogeneity of profits from trading during the 8-K gap among the different categories of information disclosed in our sample. Insiders earn economically and statistically meaningful profits when trading in the gap if the subsequent 8-K reveals information about changes in corporate documents, changes in the firm's capital structure, mergers and acquisitions, corporate restructurings, key customer or supplier agreements, stock listing compliance violations, and changes in the firm's accountant. But insiders don't always win: trades by insiders during the 8-K gap when the disclosure is related to legal issues are economically and statistically significantly unprofitable.[35] And trading profits in some categories—such as disclosures related to corporate restructurings, product or production updates, and changes in management—are not meaningfully different from zero. Nevertheless, Table 8

sales, and the results of shareholder votes—are unlikely to reflect material nonpublic information. Thus, out of an abundance of caution, we exclude any 8-K disclosing information in these categories from our sample.

[35] It may seem surprising that there is *any* category of information in which insiders who trade in the 8-K gap do not make systematic profits—and, indeed, systematically lose. We note, however, two considerations that may make this finding more consistent with intuition. First, as noted above, work in this area studying insider trades reported on Form 4 has sometimes found such trading to produce limited profits (Seyhun, 1986) or no statistically meaningful profits at all (Givoly and Palmon, 1985; Elliot et al., 1984), perhaps because insiders do not wish to report consistently profitable trading to the SEC (Meulbrook, 1992). Of course, other prior empirical work has come to the opposite conclusion (e.g. Jagolinzer, 2009; Roulstone, 2008), suggesting that results of these analyses depend significantly on the context in which the reported insider transactions occur. Nevertheless, our finding that whether insiders are able to trade profitably in the 8-K gap depends on the type of information the 8-K will reveal is consistent with prior work concluding that insiders profit inconsistently from their reported trades.

Second, we note that, to earn consistent profits between the time a corporate event occurs and the time the public learns about that event, an insider must know not only nonpublic information but the likely reaction of the market to that information when it is revealed. For two reasons, it is plausible to us that insiders could consistently err regarding the market's reaction to the resolution of outstanding legal matters involving their firms. First, most insiders in our sample lack the legal expertise necessary in order consistently to interpret market reactions to complex legal developments. Second, while these insiders *do* have the benefit of advice from legal experts, these experts have private incentives to alter their assessment of legal developments, which may lead insiders to be systematically mistaken about how markets will react to those developments.

shows that, in some informational contexts, insiders profit by trading between the time a corporate event occurs and the moment the firm reveals that event to the public.[36]

Having documented these profits, we address a possible concern. The results we have described thus far show only that insiders do, in fact, trade profitably during the 8-K gap, a finding that many might regard as unremarkable given insiders' extensive knowledge about the firm.[37] In other words, one might expect that insiders, when they trade in their own firm's stock, consistently turn a profit, regardless whether an 8-K filing is imminent. We thus wondered whether an individual who know *only* of the imminent 8-K filing—but had no other access to non-public information about the firm—could trade profitably during the 8-K gap.

To answer this question, in the next Part we test whether a particular type of 8-K filing—those announcing new agreements with customers or suppliers—predicts positive, abnormal returns in a company's stock, regardless whether insiders traded during the associated 8-K gap. We show that, in this category of information, the *gap window alone* yields directionally consistent—that is, positive—nonzero abnormal returns. Thus, a person who knew that the company had signed such an agreement, but had no other non-public information about the firm, could earn abnormal returns by buying the company's stock before the 8-K filing. We also find that, during a gap before an 8-K reveals the existence of new agreements of this type, managers are more likely to engage in open-market purchases than at other times. These results lend credence to the view that the 8-K trading gap does not merely yield spurious profits for corporate

[36] To enable readers of this Article to consider particular cases involving trading by insiders during the 8-K gap, we have released, concurrently with the Article, an online visualization that displays randomly selected cases involving open-market purchases from our dataset. The visualization may be accessed here: http://bj1.law.columbia.edu/8kgap.

[37] We emphasize that the evidence provided in Part 3 does not demonstrate that insiders profit from trades in the 8-K gap more than they profit from other trades. We did not conduct such an analysis because, in our view, there is no meaningful control period to which trades during the 8-K gap can be compared. Because previous work on the profitability of reported trading by insiders is mixed (e.g., Seyhun, 1986; Jagolinzer, 2009), we cannot say whether trading by insiders during the 8-K gap is more or less profitable than trading by corporate insiders more generally.

managers—but rather a credible trading opportunity for any trader who has access to the information before the rest of the market.

4. TRADING IN THE 8-K GAP: THE CASE OF KEY BUSINESS AGREEMENTS

In this Part, we carefully examine one type of Form 8-K: those that disclose key agreements with the firm's customers and suppliers. We focus on this category because, unlike other types of information disclosed on Form 8-K, it is possible for investors to form a clear prior about the directional effect of the disclosure of this information. For the reasons given below, on balance an 8-K revealing a new customer or supplier agreement can be expected to increase the firm's stock price. Thus, in theory traders should be able to profit by buying the company's stock after the firm enters into such an agreement and selling before the agreement is disclosed.

There are four reasons why we think that the firm's entry into agreements with its key commercial partners can be expected to be systematically associated with positive abnormal returns. First, as one of us explores more fully in contemporaneous theoretical work (Mitts, 2015), SEC rules governing the disclosure of commercial agreements give managers incentives to shift contractual activity with a positive effect on firm value into contracts that are subject to disclosure under the SEC's Form 8-K filing rules. Second, the entry into significant new agreements with commercial partners is, in expectation—even if not *ex post*—an act designed to increase the net present value of the firm's project and, hence, its stock price. Third, the SEC's 8-K rules make clear that the firm's *entry* into significant new commercial relationships is usually required to be disclosed under Form 8-K's Item 1.01. By contrast, the *termination* of such relationships—which could more plausibly reflect value-decreasing circumstances—is required to be disclosed under Form 8-K's Item 1.02 in relatively limited circumstances.[38] This

[38] For example, the SEC's 8-K rules specify in the instructions to Item 1.01 that even some agreements struck in the ordinary course of the company's business must be disclosed in Form 8-K. By contrast, these rules make clear that

asymmetry in the SEC's rules suggests that, on balance, disclosure of contracts with the firm's customers and suppliers is likely to reflect positive news.[39] Finally, the legal standard governing disclosure of these agreements—known in securities-law parlance as "materiality"—is notoriously malleable, giving managers the legal freedom to strategically disclose positive news more frequently than negative news.[40]

By contrast, we think that the disclosure of other events in the Form 8-Ks in our sample—such as changes in the terms of the company's financings, the arrival or departure of particular managers, or the announcement of a merger or acquisition—has a far more ambiguous implication for firm value.[41] New financing agreements may feature terms less favorable to the firm. The departure of a manager may be perceived by markets as being beneficial or detrimental to the firm's future. But the announcement of new real economic activity in the form of an agreement with a company's customers or suppliers is likely, on average, to increase the firm's future cash flows and, hence, its stock price.[42]

In this Part, we use this insight to examine the behavior of stock prices when customer or supplier agreements are announced on Form 8-K. In this Section, we do so largely independently

---

the termination of such agreements must be disclosed only if the agreement is material at the time of its termination *and* the termination event itself is deemed material. (SEC, 2015 (1).)

[39] We explore this intuition empirically by searching the text of the 8-K filings in our dataset to determine whether, in fact, firms report *entering* into a new agreement significantly more frequently than they report *terminating* an existing agreement. Summary statistics confirm the theoretical priors described in the text: of the 164,314 total 8-K filings in our dataset, 50,639 (30.82%) report events under Item 1.01 (*entering* into a new material agreement), while just 4,962 (3.02%) report events under Item 1.02 (*terminating* an existing material agreement).

[40] Former SEC Chairman Arthur Levitt famously rejected some calls for bright-line rules in this area, insisting that judgments regarding materiality must be made by corporate management and counsel after "consideration of all relevant factors that could impact an investor's decision." (Macdonald 1998.)

[41] Niessner (2015) draws a similar inference, noting that many "Items" that are disclosed in Form 8-K have ambiguous implications for the subsequent direction of the stock's price.

[42] An example of a Form 8-K announcing a new customer or supplier agreement that is included in our dataset is provided in Figure 3.

of specific trades by specific insiders. Instead, we ask only whether a trader who knows that the firm is about to announce an agreement of this type can systematically profit by buying the stock after the agreement is consummated and selling the stock before the agreement is disclosed.

We use statistical machine learning with textual data—an emerging method recently used by one of us to analyze judicial opinions (Macey & Mitts, 2014)—to identify the disclosure of customer or supplier agreements in the broad universe of 8-Ks we study. We begin by filtering our entire sample of 164,314 Form 8-K filings to 52,667 that contain Item 1.01 or 1.02. We then randomly selected 2,542 8-Ks and individually reviewed them, classifying them based solely upon whether the 8-K did or did not disclose a customer or supplier agreement. We then use the text of these documents to "train" a machine-learning model to determine the probability that any 8-K filing discloses such an agreement. This model then classified 5,462 of the remaining filings as disclosing a customer or supplier agreement.[43] Finally, we identify 8-Ks announcing a new agreement of this kind by limiting our sample only to 8-Ks disclosing events under Item 1.01, yielding a final sample of 4,692 8-Ks announcing new customer or supplier agreements.[44]

Having obtained a sample of disclosures with, on average, an unambiguous positive expected effect on the company's stock price, we analyze the behavior of stock prices and insiders when such disclosures occur. First, we consider whether a simple strategy of buying the

[43] A brief summary of the technical steps we took in this process follows. First, we preprocessed the documents by removing punctuation, numbers and other non-alphanumeric characters and retaining only words greater than 4 characters and less than 15 characters. We then applied what is known as the "Porter stemmer" to remove suffixes and other grammatical characteristics that do not affect the meaning of the text. Next, we extracted one, two- and three-word phrases from the document and utilized their frequency as features in a lasso logistic predictive model. We used the well-known glmnet package by Trevor Hastie and his co-authors in this step. For a more detailed discussion of the application of machine learning methods to legal scholarship, see Macey & Mitts (2014).

[44] We acknowledge, of course, that our statistical machine-learning model is imperfect in separating 8-Ks that disclose customer or supplier agreement from those that do not. To the extent that the model errs, however, we expect such errors to be randomly distributed. Thus, the error would likely bias our analyses away from finding statistically significant results.

company's stock on the day the event occurs and selling the stock on the day before the event is disclosed—that is, trading in the 8-K gap—is profitable. We then ask whether insiders engage in more open-market purchases of their own company's stock during the 8-K gap—that is, when the existence of a new agreement with the company's customers or suppliers is about to be revealed to the market.

A. Abnormal Returns to Gap Trading

We begin by calculating the abnormal returns to trading in the 8-K trading gap for customer or supplier agreements. Unlike in the previous Part, we do not sign the abnormal return—that is, we do not identify the direction of a trade and attempt to measure the return on that particular trade. Instead, here we seek to evaluate the ex ante tradability of the 8-K trading gap. Thus, we calculate the abnormal return of a trading strategy consisting simply of holding a long position over the private window portion of the 8-K trading gap as follows:

$$ar_{gap} = r_{gap} - m_{gap}$$

where r_{gap} is the return from the closing price of the event date to the closing price of the day immediately before the Form 8-K is filed[45] and m_{gap} is the return to the CRSP value-weighted market index over the same period. Just as in Part 3, we estimate abnormal returns in three separate models. First, we consider whether ar_{gap} is significantly different from zero. Second, we consider the relationship between the length of the 8-K gap and ar_{gap}. Finally, we create a

[45] Unlike in the trading results reported in Part 3 above, we exclude profits from the 8-K filing day itself in these results. The reason is that in this Part, we are not interested in *ex post* insider profits, which naturally include the price reaction on the day the 8-K is filed. Instead, we emphasize profits that can be earned by any investor who simply reacts to the information in the 8-K in the absence of any of the other informational advantages an insider might have. As explained in the text, the analysis shows that an investor could simply purchase the stock on the date a new customer or supplier agreement is struck and sell the stock on the date before that agreement is disclosed and earn consistent abnormal profits. For robustness, however, we estimate a variety of alternative specifications for ar_{gap}, including (1) attributing the 8-K filing date itself to ar_{gap}, (2) attributing the date following the 8-K filing date to ar_{gap}, and (3) beginning ar_{gap} with the closing price of the date prior to the execution date of the customer or supplier agreement. All of the results of these specifications are consistent with the findings described in Table 9. For the reasons given above, however, we believe that the specifications in Table 9 are appropriate for this test.

dummy variable for whether the insider's trade was in an 8-K gap of longer than two days and examine the relationship between that dummy variable and signed ar_{trade}. The results are described in Table 9 below:

[Insert Table 9 Here.]

As Table 9 shows, a trading strategy of simply purchasing the firm's stock on the day that the company enters into a new customer or supplier agreement earns statistically significant abnormal returns of 35.4 basis points, on average, during the private portion of the gap alone. Unlike the returns described in the prior Part, these returns are directionally consistent and are independent of any individual's idiosyncratic information set—that is, these returns could be achieved by any investor aware of the new agreement before it is disclosed. Table 9 also shows that these returns increase with the length of the 8-K trading gap—that is, the longer the gap, the larger the profits an investor can earn by following this strategy.

B. Insiders' Open-Market Purchases in the 8-K Trading Gap

Thus far in this Part, we have considered only indirect evidence of the potential for trading by insiders during the 8-K gap in advance of disclosures of customer or supplier agreements. But we have not examined insiders' behavior during 8-K trading gaps before these key agreements are disclosed.

In this final section, we consider that behavior through a narrow inquiry: whether insiders are more likely to engage in open-market purchases during 8-K gaps that precede the disclosure of customer or supplier agreements than during other periods. In particular, we ask whether insiders are more likely to execute open-market purchases in an 8-K gap that precedes the disclosure of such agreements than randomly chosen periods of time of equal duration.

We note at the outset that this comparison is imperfect. Specifically, we would expect that randomly chosen time periods are definitionally less likely to contain information, and thus cannot serve as meaningful counterfactuals to 8-K trading gaps—periods when, we know, material information is about to be disclosed to the market. Nevertheless, because of the unusual nature of insiders' open-market purchases—that is, already-undiversified insiders voluntarily opting to increase their exposure to their firm—we believe that they are, on the whole, especially likely to reflect trading on the basis of private information (an intuition consistent with, e.g., Seyhun, 1986) . We therefore suggest that a higher frequency of open market purchases during the 8-K trading gap is indicative of trading related to private knowledge of the information that will be disclosed in the subsequent 8-K.

To perform this test, we generate a new sample in which, for each Form 8-K filing date, we randomly sample trading dates from the prior quarter for the same firm that are not Form 8-K filing dates. Thus, we sample a number of trading dates equal to the number of Form 8-K filings; for example, if a firm has filed Form 8-K on fifty dates, we sample fifty other dates from the quarter prior to each filing.[46] For each date on which an 8-K was *not* filed, we impute a gap duration that is equal to its corresponding Form 8-K filing.[47] This imputed gap is utilized to collect all of the trades that occurred during those filing dates.

We then consider individual trades reported on Form 4 for each trading date in both the "8-K" and "control" subsamples. Since we only see insider trades that are reported on any given date, we "fill out" the panel by adding observations with zero trades for each individual who is

[46] Thus, the unconditional probability of a trading date being included in the 8-K and control subsamples in this test is equal to 50% for each.

[47] Suppose, for example, the first trading date in this sample with an 8-K filing featured an 8-K gap of three days. In that case, the matching date *without* an 8-K filing would be imputed a gap of three days, so that each trading period would last three days.

affiliated with the firm but did not report trades on a particular trading date. We then generate a binary variable to reflect whether an open-market purchase has occurred on each trading date.

We estimate the following model using a linear probability model, i.e., ordinary least squares with a binary dependent variable:

$$y_{ijk} = \alpha + \beta d_{ijk} + \eta i \quad + \theta_j + \psi_k + \epsilon_{ijk}$$

where y_{ijk} is a binary variable equal to 1 if individual *i* traded in firm *j*'s stock in the *k*th 8-k trading gap or matched control period, d_{ijk} is an indicator variable equal to 1 if the observation is in an 8-K trading gap and 0 if in a matched control period, η_i is a fixed effect for individual *i*, θ_j is a fixed effect for firm *j*, ψ_k is a fixed effect for the *k*th 8-k trading gap and matched control period, and ϵ_{ijk} is a random error term. We then consider the relationship between the probability of a particular individual making an open-market purchase and whether that probability is associated with whether that purchase occurs in an 8-K gap. The results are described in Table 10 below, which reports the results as well how they vary when various combinations of these fixed effects are included in the model:

[Insert Table 10 Here.]

As Table 10 shows, insiders are more likely to conduct open-market purchases during 8-K gaps that precede the disclosure of customer or supplier agreements than during other periods. For example, Model (4) in Table 10—which uses individual-specific fixed effects to address heterogeneity related to unobservable differences among individual insiders—estimates that insiders are about 20% more likely to engage in open-market purchases during 8-K gaps that precede the disclosure of customer or supplier agreements than during other periods.[48] These

[48] Because the constant term in the models presented in Table 10 reflects the unconditional probability that an open-market purchase will occur on any particular trading date, the marginal effect of the 8-K variable can be calculated by dividing the coefficient on that variable by the constant term. Thus, for example, Model (4) reports a coefficient

results are robust to all five specifications presented in Table 10, each of which shows that insiders are statistically significantly more likely to execute an open-market purchase in 8-K gaps than during other periods. A natural question, of course, is whether these open-market purchases in advance of the disclosure of customer or supplier agreements are, on average, profitable trades. In unreported analysis, using the same methodology described in Part 3, we find that these trades yield an average abnormal return of 104 basis points.

This finding suggests that executives are more likely to pursue unusual open-market purchases in their own company's stock when the firm is about to disclose significant new business agreements than during other periods. Taken together, the results presented in this Part provide evidence that insiders can—and do—earn significant abnormal profits by trading during 8-K gaps that precede the disclosure of new customer or supplier agreements.

5. POLICY CONSIDERATIONS AND CONCLUSION

Our evidence shows that public-company insiders trade during the 8-K gap—and earn economically and statistically meaningful profits when doing so. Before concluding, we briefly consider three implications of these findings for policymakers concerned about trading by corporate insiders.[49]

First, as noted in Part 2, any regulatory design choice regarding the SEC's rules can be expected to influence insiders' behavior. We have shown that, in light of the choice that the SEC has made—to permit firms to wait four trading days before disclosing material events to

on the 8-K variable of .00579 (at greater than 99% statistical significance). That Model also reports a constant term of .0280. Therefore, Model 4 estimates that insiders are 20.6% (.00579 divided by .0280) more likely to engage in open-market purchases in an 8-K gap preceding the disclosure of a new customer or supplier agreement than during the "control" periods described in the text. As noted in the text preceding Table 10, the other models we present differ only in terms of the fixed effects used to address unobserved heterogeneity. For example, Model (3) uses daily fixed effects to address heterogeneity over time—for instance, the possibility that our results are driven by trading during a particular time period. As noted in Table 10, our results are consistent across those specifications.

[49] We note that Congress is now considering several potentially important changes to insider-trading law. (Ackerman, 2015.)

investors—insiders trade extensively between the time these events occur and when they are disclosed. It may be that the Commission, in balancing the relationship between the design of its disclosure rules and insider-trading activity, has concluded that the benefits of the four-day rule outweigh the costs related to the trading activity documented here. For three reasons, however, we are not confident that current law reflects such an analysis. First, as we have pointed out, following the Enron and WorldCom scandals—which, many asserted, included significant trading by insiders in advance of the collapse of both firms—Congress directed the Commission to require disclosure of significant corporate events "urgent[ly]." Second, the SEC invests considerable public resources in the enforcement of the insider-trading laws; it is counterintuitive (though possible) to suppose that it does so while designing its disclosure rules in a fashion that invites trading by insiders. Finally, the SEC rulemaking in 2004 that created the four-day 8-K gap—rather than the shorter two-day gap the agency had initially proposed—did not examine, or even acknowledge, the trading activity identified here.

Second, many large public companies voluntarily adopt what are known as "blackout periods" during the pendency of critical corporate announcements, most commonly the quarterly announcement of the company's earnings. Although blackout-period policies vary considerably across firms, most emphasize earnings announcements, permitting insiders to trade when other corporate events—such as those studied here—are known to insiders but not the public. (Bettis et. al, 1999.) Our study provides evidence that insiders do, in fact, trade during this period. The results suggest that firms concerned about the litigation and other costs associated with trading by insiders prior to the announcement of key corporate events should consider expanding these policies to apply to a broader group of events, including those that the firm will disclose in a subsequent Form 8-K.

Finally, our findings provide a framework for lawmakers considering changes to the mandatory-disclosure rules that have long dominated the securities-law landscape. Policymakers might draw two preliminary lessons from our evidence. First, our evidence that insiders trade profitably during the 8-K gap suggests that lawmakers should be mindful of the insider-trading implications of design choices associated with mandatory disclosure rules. Second, our findings—and particularly those documenting significant heterogeneity in trading by insiders based upon the content of the information that will be disclosed to the public—suggest that a single disclosure rule governing all information types may be inadvisable. Instead, policymakers should consider whether the nature of the underlying information itself should shape the disclosure rule that governs whether and when that information will be revealed to the market.

Table 1. Summary Statistics: Distribution of Firms and 8-K Filings by Year. This table describes the number of firms in our sample in each of the eleven years of the period we study. The table also describes the average number of Form 8-K filings on a per-firm basis in each year.

Year	# of Firms	# of 8-Ks per Firm
2004	3,304	6.1429
2005	3,277	5.249
2006	3,350	5.1388
2007	3,452	4.2975
2008	3,372	4.1011
2009	3,294	4.0592
2010	3,255	3.9226
2011	3,372	3.9585
2012	3,479	3.975
2013	3,574	3.9253
2014	3,702	3.6718

Table 2. Summary Statistics: Number of 8-Ks by Gap Length and Market Capitalization Decile. This table presents the number of Form 8-K filings by market capitalization decile and gap length.

Market Cap Decile	Gap Length in Trading Days					
	0	1	2	3	4	5
10%	5951	2774	1851	1860	3059	335
20%	7087	2525	1702	1769	2566	215
30%	7375	2676	1550	1571	2475	161
40%	7668	2718	1563	1516	2238	123
50%	7343	2898	1641	1647	2225	126
60%	7452	2906	1643	1541	2128	120
70%	7541	2843	1540	1557	2209	118
80%	7399	2983	1504	1557	2342	105
90%	7707	2906	1499	1424	2143	111
100%	8794	2657	1531	1219	1503	99
Total	74,317	27,886	16,024	15,661	22,888	1,513

Table 3. Summary Statistics: Trading Activity in the 8-K Gap over Time. This table presents the total number of trades in the 8-K trading gap in our dataset by year, as well as the average number of trades per 8-K trading gap in each year—that is, the total number of trades in the gap divided by the number of 8-Ks with gaps in each year.

Year	Trades in 8-K Trading Gap	Average Trades per 8-K Trading Gap
2004	1,960	5.63
2005	4,221	6.63
2006	5,298	7.91
2007	7,457	10.51
2008	4,768	7.12
2009	3,069	5.47
2010	2,788	6.17
2011	3,193	5.39
2012	3,246	4.64
2013	3,436	5.66
2014	3,384	4.67

Table 4. Form 8-K Categories. The following table lists the fourteen categories into which we classified each of the Form 8-K filings in our sample.

Category Name	Definition
Changes in Corporate Documents	Bylaws, charters, and code of ethics documents.
Capital Structure	Share repurchase authorization or actual share repurchases; issuance of equity, preferred equity, and/or debt; dividend or special dividends for both equity and preferred equities; new loans or revolving credit agreements, or refinancing loans or credit revolvers; payment of interest expense on debt; buying back debt.
Mergers and Acquisitions	Acquisitions of other companies or assets; spin-offs, asset sales, etc.
Corporate Restructuring	Downsizing of certain groups, change of business segments, re-alignment of segment and/or corporate cost structure.
Key Customer and Supplier Agreements	Occurs when material customer or supplier agreements are announced, or changes/amendments made to these types of agreements.
Product or Production Updates	Occurs when material information is revealed on a product or production.
Stock Listing Compliance Violations	NASDAQ or NYSE may inform a company that it is out of compliance with certain rules or regulations, which threaten company's listing status.
Changes in Management and/or Board of Directors	Includes promotions, resignations, new hires, and deaths of management and directors.
Executive and Director Pay	Includes salary increases, bonus awards, shares vested, director pay adjustments, establishing performance targets for bonuses and awarding bonuses, approval of incentive pay, and indemnification agreements for managers and directors.
Stock sales or purchases by insiders	Sales of company equity by managers and directors.
Voting Results from Annual Meetings	Standard voting results for annual meetings: will normally include election of directors, ratification of auditor, approving compensation of management team.
Change in Accountant	Will usually include simultaneous dismissal of former accountant and hiring of new accountant.
Announcement and Resolution of Legal Issues	Includes subpoenas, jury trials, class action lawsuits, and significant legal settlements.
Other	If 8-K event does not fit in one of above categories.

Table 5. Distribution of Form 8-K Filings with Trades in the 8-K Trading Gap by Category. This table presents the frequency of the 15,419 Form 8-K filings with trades in the 8-K Trading Gap by the manually coded category for that Form 8-K filing.

Changes in Corporate Documents 1,225	Changes in Capital Structure 3,739	Mergers and Acquisitions 1,324	Corporate Restructuring 188	Key Customer and Supplier Agreements 730	Product or Production Updates 196	Stock Listing Compliance Violations 215
Changes in Management or Board of Directors 704	Executive and Director Pay 3,477	Stock Sales or Purchases by Insiders 87	Voting Results from Annual Meetings 3,477	Change in Accountant 270	Announcement and Resolution of Legal Issues 435	Other 876

Table 6. Profitability of Trading by Insiders During the 8-K Trading Gap. In this Table, we provide the results of three ordinary least squares models in which the dependent variable is signed ar_{trade} for the trades by insiders in our sample—that is, insiders' abnormal returns from transactions in the 8-K trading gap. Model (1) considers whether, on average, signed trading profits from trades in the 8-K gap are significantly different from zero. Model (2) examines the relationship between the length of the 8-K gap, in days. Model (3) considers the relationship between a dummy variable for cases wherhe the 8-K gap is longer than two trading days. The latter two models are described by the following linear specifications:

$$\text{signed } ar_{trade} = \alpha + \beta x_{gap} + \epsilon$$

$$\text{signed } ar_{trade} = \alpha + \beta d_{gap>2\,days} + \epsilon$$

Where α is a constant term that estimates the average signed ar_{trade} in the absence of a gap in the first model and the average signed ar_{trade} for gap lengths of one or two days in the second model; β is the marginal increase in signed ar_{trade} per day of the 8-K trading gap in the first model and the average signed ar_{trade} for gaps over two trading days, and ϵ is a random error term. T-statistics are provided below correlation coefficients in parentheses. We use the following indicators of statistical significance: **** indicates $p < 0.001$, ** indicates $p < 0.01$, and * indicates $p < 0.05$.

	(1)	(2)	(3)
	signed ar_{trade}	signed ar_{trade}	signed ar_{trade}
Gap (Per Day)		0.00133*** (6.34)	
Gap Over 2 Days			0.00339*** (6.67)
Constant	0.00423*** (16.88)	0.000346 (0.55)	0.00202*** (5.12)
N	41,192	41,192	41,192

Table 7. Profitability of Trading by Insiders During the 8-K Gap by Transaction Type. This table presents the average signed ar_{trade} by each transaction code in the Form 4 data. The Table also presents a statistical test of whether the average signed ar_{trade} for each transaction code is significantly different from zero. T-statistics are provided below correlation coefficients in parentheses. We use the following indicators of statistical significance: **** indicates $p < 0.001$, ** indicates $p < 0.01$, and * indicates $p < 0.05$.

	Grants of Stock or Options	**Stock Option Conver-sions**	**Share Forfeiture Under Contract**	**Exercise Price Paid in Shares**	**Bona Fide Gifts**	**Option Exercises**	**Open-Market Purchases**	**Open-Market Sales**
Constant	0.00185*** (3.49)	0.00529 (1.69)	0.00692*** (4.83)	0.0024** (2.78)	-0.00454** (-3.06)	0.0032*** (4.74)	0.0163*** (9.99)	0.00463*** (14.49)
N	9,488	525	508	3,646	768	5,394	2,730	17,888

Table 8. Profitability of Trades in the Gap by 8-K Information Type. This Table presents the average returns for insiders trading in the 8-K gap on the basis of the sign of each insider's transaction (signed ar_{trade}). That is: For purposes of this Table, insiders are treated as having obtained a long position or short position on the date of their trade based on the transaction code listed on Form 4. The Table also includes a statistical test of whether the average ar_{trade} for each category of information is significantly different from zero. T-statistics are provided in parentheses for each category. We use the following indicators of statistical significance: **** indicates $p < 0.001$, ** indicates $p < 0.01$, and * indicates $p < 0.05$.

As the Table shows, insiders enjoy economically and statistically significant trading gains when their trades precede 8-Ks disclosing information in seven of the eleven categories we study, including information about: changes in corporate documents, changes in capital structure, mergers and acquisitions, key customer and supplier agreements, stock listing compliance violations, and changes in the firm's accountant. We document that insiders experience economically and statistically significant *losses* when the 8-K provides information on the announcement or resolution of legal issues.

	Changes in Corporate Documents	Changes in Capital Structure	Mergers and Acquisitions	Corporate Restructuring	Key Customer and Supplier Agreements	Product or Production Updates
signed ar_{trade}	0.00320***	0.00616***	0.00467***	-0.00419	0.00505***	-0.00173
	(5.02)	(14.65)	(9.24)	(-1.67)	(6.05)	(-0.80)
N	6,791	15,678	6,211	539	4,018	780

	Stock Listing Compliance Violations	Changes in Management or Board of Directors	Change in Accountant	Announcement and Resolution of Legal Issues	Other
signed ar_{trade}	0.0111***	-0.000541	0.0118***	-0.00464***	0.00108
	(3.97)	(-0.40)	(4.59)	(-4.21)	(1.64)
N	546	1,266	1,009	1,704	4,015

Table 9. Abnormal Returns in the 8-K Trading Gap for Customer and Supplier Agreements. In this Table, we provide the results of three ordinary least squares models in which the dependent variable is ar_{gap}. Model (1) considers whether ar_{gap} is significantly different from zero among those filings with non-zero 8-K trading gaps. Then, in Models (2) and (3), we regress signed ar_{gap} on the length of the gap, or when a gap of over two trading days is present, in the following models:

$$ar_{gap} = \alpha + \beta x_{gap} + \epsilon$$
$$ar_{gap} = \alpha + \beta d_{gap>2\,days} + \epsilon$$

Where α is a constant term that estimates the average ar_{gap} ; β is the marginal increase in ar_{gap} per day of the 8-K trading gap in Model (2) and the average ar_{gap} for gaps over two trading days in Model (3); and ϵ is a random error term. Note that our sample size of 3,652 is slightly smaller than the sample of 4,692 8-Ks disclosing agreements of this type because we exclude 8-Ks with no trading gap from this analysis. of T-statistics are provided below correlation coefficients in parentheses. We use the following indicators of statistical significance: **** indicates $p < 0.001$, ** indicates $p < 0.01$, and * indicates $p < 0.05$.

	(1)	(2)	(3)
	ar_{gap}	ar_{gap}	ar_{gap}
Gap (Per Day)		0.00199**	
		(2.93)	
Gap Over 2 Days			0.00455**
			(2.98)
Constant	0.00354***	-0.00184	0.000905
	(4.26)	(-1.36)	(1.19)
N	3,652	3,652	3,652

Table 10. Probability of Open Market Purchases During the 8-K Trading Gaps Immediately Prior to Disclosure of Customer or Supplier Agreements. This table presents the results of an ordinary least squares regression in which the dependent variable is a dummy for whether an insider executed an open-market purchase on a particular trading date. The variable of interest is a dummy for whether that trading date falls in an 8-K gap. The details of the selection of trading dates, as well as the specifications of the models below, are described in the text.

The models below differ only regarding the fixed effects used to absorb time-invariant heterogeneity. Model (1) includes no fixed effects; Model (2) includes firm fixed effects; Model (3) includes daily fixed effects; Model (4) includes individual fixed effects; and Model (5) includes fixed effects for each individual pair of 8-K trading gaps and matched trading dates (to address, among other things, the possibility that other results are driven by outlier pairs). T-statistics are provided below correlation coefficients in parentheses. We use the following indicators of statistical significance: **** indicates $p < 0.001$, ** indicates $p < 0.01$, and * indicates $p < 0.05$.

	(1)	(2)	(3)	(4)	(5)
	p(purchase)	p(purchase)	p(purchase)	p(purchase)	p(purchase)
8-K Filing	0.0106***	0.00847***	0.00896**	0.00579*	0.00452*
	(3.92)	(3.73)	(2.62)	(2.54)	(2.15)
Constant	0.0256***	0.0267***	0.0264***	0.0280***	0.0287***
	(14.68)	(16.42)	(13.63)	(17.23)	(19.49)
N	16,368	16,368	16,368	16,368	16,368
Fixed Effects	None	Firm	Daily	Individual	8-K/ Control Pair

Figure 1. Summary Statistics: The Length of the 8-K Trading Gap. The figure below presents a histogram of the 8-K trading gap, defined as the number of days between the date the significant corporate event occurs and the date that the event is disclosed on Form 8-K. The Figure below excludes "negative" gaps (which occur when the disclosure occurs prior to the event) and gaps that exceed five days (which may reflect the kinds of exceptional circumstances that lead the firm to miss the SEC's filing deadline).

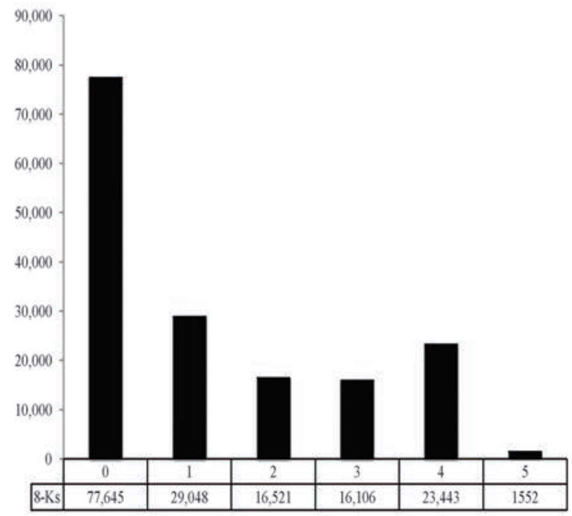


Figure 2. Summary Statistics: Distribution of Trading by Insiders by 8-K Gap Length. The figure below presents the frequency of trades in our dataset based on the length of the 8-K trading gap in which the trades occurred. Each bar describes the number of trades that occurred in 8-K gaps of a particular length. That is: just less than 7,000 trades occur during one-day gaps, i.e., cases in which there is one day between the occurrence of the event and the filing of an 8-K disclosing that event. By contrast, over 16,000 trades occur during four-day gaps, i.e., cases in which there are four days between the occurrence of the event and the filing of an 8-K disclosing that event.

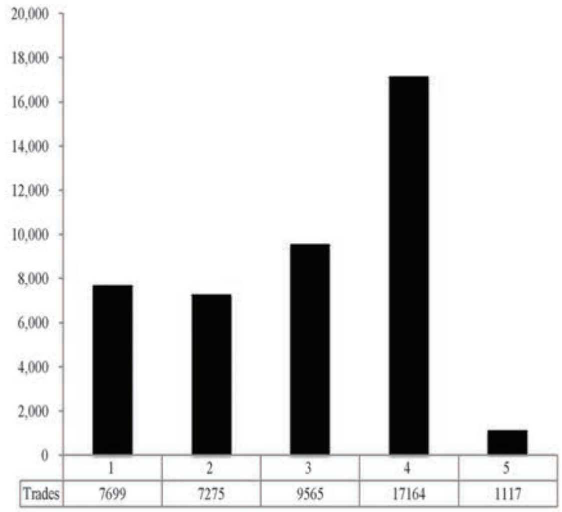


Figure 3. Announcement of New Customer or Supplier Agreements: Example. The Form 8-K below provides a typical example of an 8-K announcing a new customer or supplier agreement of the type included in the sample used in Part 4. Note that the company entered into the agreement on July 13, 2010, but did not file this 8-K until July 19, 2010; excluding the intervening weekend, this 8-K features a trading gap of three days.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): **July 13, 2010**

Emergent BioSolutions Inc.
(Exact Name of Registrant as Specified in Charter)

Item1.01. Entry into a Material Definitive Agreement.

On July 13, 2010, Emergent BioDefense Operations Lansing Inc., a wholly-owned subsidiary of Emergent BioSolutions Inc. ("Registrant"), entered into an agreement with the Office of the Biomedical Advanced Research and Development Authority ("BARDA") of the U.S. Department of Health and Human Services to develop and obtain regulatory approval for large-scale manufacturing of BioThrax® (Anthrax Vaccine Adsorbed) in the Registrant's vaccine manufacturing facility in Lansing, Michigan.

The agreement is a cost-plus-fixed-fee development contract valued at up to approximately $107 million, including a two-year base period of performance of approximately $54.6 million, and three option years valued at a total of approximately $52.3 million. The two-year base period of performance is from July 19, 2010 to July 18, 2012. Each additional option period, if exercised, would extend the period of performance by an additional year, and the entire contract period of performance would end on July 18, 2015.

Activities to be conducted during the two-year base period include completion of characterization and immunogenicity studies, successful consistency lot validation, and a pre-IND meeting. Optional activities to be conducted following BARDA's exercise of each option year would include, among other things, stability demonstrations, clinical studies and biologics licensing application activities.

A copy of the Registrant's press release announcing the award is attached as Exhibit 99.1.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: July 19, 2010

EMERGENT BIOSOLUTIONS INC.
By:____________________

REFERENCES

Ackerman, Andrew & Aruna Viswanatha. Lawmaker Proposes Bipartisan Insider-Trading Ban. Wall Street Journal, 2015.

Bebchuk, Lucian A. & Robert J. Jackson, Jr. The Law and Economics of Blockholder Disclosure. Harvard Business Law Review, 2(1), 39-60, 2012.

Bettis, J. Carr, Michael L. Lemmon & Jeffrey L. Coles. Corporate Policies Restricting Trading by Insiders. Journal of Financial Economics, 57(1), 191-220, 2000.

Brown, Stephen J. & Jerold B. Warner. Measuring Security Price Performance. Journal of Financial Economics 8, 205-258, 1980.

Coffee, Jr., John C. Market Failure and the Economic Case for a Mandatory Disclosure System. Virginia Law Review, 70(4), 717-753. 1984.

Daines, Robert, Grant Richard McQueen & Robert J. Schonlau. Right on Schedule: CEO Option Grants and Opportunism. Working paper, 2015.

Elliott, John, Dale Morse & Gordon Richardson. The Association Between Insider Trading and Information Announcements. The RAND Journal of Economics, 521-536, 1984.

Friedman, Jerome, Trevor Hastie, Rob Tibshirani & Noah Simon. Lasso and Elastic-Net Regularized Generalized Linear Models. Available at https://cran.r-project.org/web/packages /glmnet/glmnet.pdf.

Givoly, Dan & Dan Palmon. Insider Trading and the Exploitation of Inside Information: Some Empirical Evidence. Journal of Business, 58(1), 69-86, 1985.

Goshen, Zohar & Gideon Parchomovsky. The Essential Role of Securities Regulation. Duke Law Journal, 55(4), 711-782, 2006.

Guimaraes, Paulo & Pedro Portugal. A Simple Feasible Alternative Procedure to Estimate Models with High-Dimensional Fixed Effects. Stata Journal, 10(4), 628-649, 2010.

Henderson, Todd M., Alan D. Jagolinzer & Karl A. Muller, III. Offensive Disclosure: How Voluntary Disclosure Can *Increase* Returns from Insider Trading. Georgetown Law Journal, 103, 1276-1306, 2012.

Ivashina, Victoria & Zheng Sun. Institutional Stock Trading on Loan Market Information. Journal of Financial Economics, 100(2), 284-303, 2011.

Jackson Jr., Robert J., Wei Jiang & Joshua Mitts. How Quickly Do Markets Learn? Private Information Dissemination in a Natural Experiment. Working paper, 2014.

Jaffe, J. Special Information and Insider Trading. Journal of Business 47(3), 410-428, 1974.

Jagolinzer, Alan D. SEC Rule 10b5-1 and Insiders' Strategic Trade. Management Science, 2009.

Jensen, Michael C. & William H. Meckling. Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure. Journal of Financial Economics 3(1), 305-360, 1976.

Lorie, James H. & Victor Niederhoffer. Predictive and Statistical Qualities of Insider Trading. Journal of Law and Economics, 11(1), 35-53, 1968.

Macdonald, Elizabeth. SEC Readies New Rules for Companies About What is "Material" for Disclosure. Wall Street Journal, 1998.

Macey, Jonathan & Mitts, Joshua. Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil. Cornell Law Review, 100, 99-155, 2014.

Manne, Henry. Insider Trading and the Stock Market, 1965.

Meulbroek, Lisa K. An Empirical Analysis of Illegal Insider Trading. Journal of Finance, 47(5), 1661-1699, 1992.

Mitchell, Mark L. & Erik Stafford. Managerial Decisions and Long-Run Stock Price Performance. Journal of Business 73, 287-329, 2000.

Mitts, Joshua R. Asymmetric Disclosure of Material Contracts. Working paper, 2015.

Mitts, Joshua R. A Private Ordering Solution to Blockholder Disclosure. North Carolina Central Law Review, 35(4), 203-243, 2013.

Niessner, Marina. Strategic Disclosure Timing and Insider Trading. Working paper, 2015.

Robbins, Alexander P. The Rule 10b5-1 Loophole: An Empirical Study. Review of Quantitative Finance and Accounting 34(2), 199-224, 2010.

Rogers, Jonathan L. Disclosure Quality and Management Trading Incentives. Journal of Accounting Research 46(5), 1265-1296, 2008.

Roulstone, Darren T. Insider Trading and the Information Content of Earnings Announcements. Working paper, 2008.

Schizer, David M. Executives and Hedging: The Fragile Legal Foundation of Incentive Compatibility. Columbia Law Review 100(2), 440-504, 2000.

Seyhun, H. Nejat. Investment Intelligence from Insider Trading, 2000.

Seyhun, H. Nejat. Insiders' Profits, Costs of Trading, and Market Efficiency. Journal of Finance 16, 189-212, 1986.

Stevenson, Alexandra & Matthew Goldstein. U.S. Asks Supreme Court to Review Insider Trading Ruling. New York Times, 2015.

United States Securities and Exchange Commission. Proposed Rule: Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date. Exchange Act Release Nos. 33-8106 and 34-4604, 2002.

United States Securities and Exchange Commission. Final Rule: Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date. Exchange Act Release Nos. 33-8400 and 34-49424, 2004.

United States Securities and Exchange Commission (1). Form 8-K: Current Report Pursuant to Section 13 OR 15(d) of the Securities Exchange Act of 1934, 2015. Available at https://www.sec.gov/about/forms/form8-k.pdf.

United States Securities and Exchange Commission (2). EDGAR Filer Help Sheet, 2015. Available at https://www.sec.gov/info/edgar/besttips.htm.

United States Securities and Exchange Commission (3). EDGAR Filing Manual Volume II: EDGAR Filing 7-64 (May 2015). Available at https://www.sec.gov/info/edgar/edgarfm-vol2-vol31.pdf.

Wachtell, Lipton, Rosen & Katz. Letter to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 2011.