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OVERSIGHT OF THE SECURITIES AND EXCHANGE COMMISSION

HEARING

BEFORE THE

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

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

ON

RECEIVING UPDATES FROM THE CHAIRMAN OF THE SECURITIES AND EXCHANGE COMMISSION REGARDING THE AGENCY'S WORK AND AGENDA

NOVEMBER 17, 2020

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C O N T E N T S

TUESDAY, NOVEMBER 17, 2020

WITNESS

OVERSIGHT OF THE SECURITIES AND EXCHANGE COMMISSION

TUESDAY, NOVEMBER 17, 2020

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

The Committee met at 10:01 a.m., via Webex, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. Good morning. This hearing will come to order. This hearing is another remote hearing by video, and a few videoconferencing reminders again.

Once you start speaking, there will be a delay on your screen, so do not be bothered by that, before you are displayed on your screen.

To minimize the background noise, I again remind you to click the mute button until it is your turn to speak or ask questions.

If there is a technology issue, we will move to the next Senator until it is resolved. And I remind all Senators again that the 5-minute clock still applies. You should have a box on your screen labeled "Clock" that shows how much time is remaining. But we have had some trouble, and I have had Senators tell me they just cannot find that box or do not see it. And so, in fact, last hearing one of the Senators asked me to give a reminder. I am going to do that this time for everybody. So at 30 seconds left on your clock, there will be a tone, a bell ring, to remind Senators and the witnesses that the time has almost expired. And then at the end of the 5 minutes, another bell will ring. That way we can all know how the clock is working, even though we do not find it on our screens.

Today we will receive testimony from Securities and Exchange Commission Chairman Jay Clayton regarding the work and agenda of the SEC.

I thank you, Chair Clayton, for your appearance before the Committee today, which is essential to our oversight of the SEC, and welcome.

You last appeared before this Committee in December of last year.

The COVID–19 pandemic hit the United States shortly after that hearing, and the SEC has taken many important steps to help limit the economic shock to our markets as Governments have attempted to confront this unprecedented event.

The SEC used tools, such as the marketwide circuit breakers, for the first time since their adoption, when markets dropped 7 percent from the previous day's closing price of the S&P 500 Index.

There were a number of uses of "limit down" circuit breaks when overnight stock futures hit their 5 percent limit, which resulted in halting of all further downward trades

Despite the high levels of volatility, it is my understanding that the current mechanisms in place served their intended purposes of increasing market stability.

Additionally, in order to comply with CDC guidance, you oversaw an unprecedented temporary closure of physical trading floors. This business continuity measure supported orderly trading, while ensuring the health and safety of market participants.

The SEC has continuously pursued enforcement actions, including a number of actions against those seeking to take advantage of investors during this vulnerable time.

Remarkably, all of this has been done while the SEC staff is working remotely.

It is commendable that despite the COVID–19 disruptions, you have continued to advance the items on your regulatory agenda which are the result of many months, and sometimes years, of diligent staff work.

The SEC finalized amendments to update and improve the definitions of "accredited investor" and "qualified institutional buyer," which will now take into consideration education and expertise, ultimately increasing investor participation in private offerings and expanding access to capital markets.

The SEC recently modernized the exempt offering framework, which will be a lifeline to small and medium-sized companies navigating the previously complex system.

These clear and concise rules will allow smaller companies to focus on getting their businesses back on track while improving the consistency of investor protections.

Commissioner Roisman engaged investors and market participants in crafting modernized shareholder proposal thresholds and proxy voting rules.

These modernizations no longer permit a small number of individuals with limited stakes to consume corporate boardrooms and will allow companies to better focus their efforts on COVID–19 recovery.

The SEC improved the readability and streamlined the information collected for Regulation S–K disclosures. It had been more than 30 years since these disclosures had been reviewed.

Last year, the SEC finalized a package of rulemakings including Regulation Best Interest, Form CRS Relationship Summary, and two interpretations under the Advisers Act.

Compliance with these rules began on June 30. Since June, the SEC has been reviewing firms' compliance efforts and identifying additional areas for compliance improvements through a staff roundtable and other stakeholder engagement.

Another modernization effort underway at the SEC is the creation of the Strategic Hub for Innovation and Financial Technology. This important initiative is critical in the interagency coordination and dissemination of information to the public regarding initial coin offerings and other cryptocurrency matters.

Clearly, the SEC has been busy, and I commend you for balancing emergency COVID–19 responses while advancing critical rulemaking initiatives, risk-based inspections, enforcement actions, and issuer and fund filings.

I look forward to continuing to work with the SEC to ensure that U.S. markets come back from the COVID–19 disruptions stronger, more liquid, and more dynamic than ever before.

In closing, I also thank Chairman Clayton for his service and wish him the best of luck in his future endeavors as he departs the Commission in the coming weeks.

The will and drive you brought to this job allowed you to bring about many significant improvements that were long overdue, and I wish you the best of luck in your future endeavors and, again, thank you for your service.

Senator Brown.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. Chairman Crapo, I believe this is your last hearing, I think, and if it is, thank you for the relationship we have had and our ability to work together and your cooperation even when we obviously had major disagreements, but thank you for that.

Chair Clayton, thank you for your service to our country.

In this election, voters rejected this Administration and its "Wall Street first" attitude. Across the country, it is clear that people want financial watchdogs who look out for them, not make life easier for American CEOs. It is time to turn the page on this failed Administration, by at least 5 million votes, we know, and to work together to build an economy that actually works for everyone.

That means an economy where all workers can save and invest their hard-earned money for a downpayment, to help send their kids to a community college, and to retire with dignity. That is how we grow the middle class, and it is time that everyone had the chance to join it.

That means finally working in a real way to eliminate the racial wealth gap. It means we have to enlist everyone in our Government in this project, including the SEC.

This year the dedicated public servants at the Commission have done important work in the middle of a public health crisis and an economic crisis—we thank you and all of them for that—monitoring for fraud and misconduct related to the pandemic while continuing their work to protect investors, maintaining orderly markets, and promoting capital formation.

Those efforts help working families saving and investing today and build confidence in our markets for the future.

But I believe we aim higher or should aim higher than simply making markets more stable. We can do better than just preventing crashes and outright fraud. We need to make markets actually work for working people.

Over the years, I have raised concerns about how your leadership has left behind the people whose savings are at stake in our markets—denying them the ability to hold executives accountable and withholding critical information about how companies are run and how they affect the environment and their communities.

You have tried to reduce transparency; you have tried to undermine the protections we do have—even in the face of strong opposition from large and small investors, from advocates, and from experts.

From employees across the country scrimping and saving to put money in their retirement accounts to pension managers investing for a generation of workers, they are all in a worse place since you have been in office. That does not even include those who want to save for their family and their retirement, but just cannot because their paycheck is not enough. The wealthy get wealthier and the middle class shrinks.

You pushed for what you call "Regulation Best Interest"—your term—a new standard that applies when brokers give advice to clients, but it does not put mom-and-pop customers first. A few weeks ago, you discussed the SEC's initial reviews after the standard went into effect in June.

Even though you said firms are making, again, your words, "good-faith efforts", your staff reported shortcomings in compliance and failures to fully disclose disciplinary history to clients. In fact, it does not seem like you have any way to tell if this rule will help at all. Not an especially auspicious beginning.

The SEC's final rules on proxy advisers and shareholder proposals are really clear examples of the Administration taking the side every single time in this Committee—we talk about this every single time—we know this. Every single time people get in line to do this, the Administration taking the side of corporate interests over Americans saving and investing for the future.

Over the years, shareholder engagement has forced important conversations to happen in boardrooms. We need to push companies to focus on improving diversity, implementing better governance, and addressing climate change risks. Yet your agenda has attempted to stifle these important conversations.

I am not the only one who is worried about your agenda. Last week, the North American Securities Administrators Association wrote you because 30 of its members—State watchdogs, including from Ohio—are concerned about a recent, broad rule with few safeguards that, in their words, "would facilitate unlicensed intermediaries in the private market."

That is a polite way of saying they are very concerned about rampant fraud.

Not only are they worried that you are putting their constituents at risk; they are upset that they did not even get a heads-up.

While you were advancing one bad rule after another, always tilted toward corporate interests, you did not take the opportunity to make sure public companies disclose the risks that climate change poses to their businesses. You did the opposite, watering down corporate financial disclosures.

When you tried to improve corporate workforce disclosure, it still fell short, failing to address basic concepts like employee turnover or to identify the numbers of full-time workers compared to part-time workers.

We are never going to be able to undo the corporate business model that treats workers as expendable if we cannot even get companies to put out accurate information on the workers who make their businesses successful.

While the pandemic posed challenges for the Commission's enforcement work, it also revealed how applying additional resources to the whistleblower program delivers results. And congratulations on that. By reallocating staff to review whistleblower tips, you managed record results. I hope that my concerns about the uncertainty created by your recent changes to the rules do not undermine the obvious successes of that program.

More broadly on enforcement, although the SEC has aggressively pursued COVID-related scams and frauds, the last year of enforcement shows more of the same—a few big cases create a big topline number, but looking under the hood, you see too many cases without individual accountability.

Last week's announcement that the SEC charged Wells Fargo's former CEO and consumer bank head for deceiving investors as part of the fake account scandal that was uncovered in 2016 is a rare and long overdue case—again, 2016—where your agency has actually held someone accountable for breaking the law and ripping people off at a big bank or corporation.

Back when you were a nominee, you assured us, your words again, that "individual accountability drives behavior more than corporate accountability." Well, you do not get better behavior by taking years—years. We have been talking about the Wells Fargo scandal for almost half a decade—by taking years to hold top executives individually accountable for intentional—and God knows it was intentional—deception.

American voters sent a clear message in this election, about 80 million of them: They are tired of an economy where big corporations and their wealthy CEOs play by a different set of rules than people who work for a living.

With each rollback of important safeguards or each disenfranchisement of shareholders, you claimed to be reforming, modernizing, or updating the rules.

People are tired of that political spin. When you say "reform," it seems you mean make things a little easier for the biggest guys. When you say "modernize," you seem to mean make it that much harder to actually hold powerful CEOs accountable. When you say "update," you seem to mean further entrench the Wall Street business model that exploits workers. And we know they do.

Eighty million Americans rejected your agenda in this election. I hope we can reverse it.

As you prepare to leave the Commission, you have changed the rules so much, even you will need to relearn fundamental elements of securities law when you return to what I assume will be a lucrative private practice.

I have said it before. Protecting workers' hard-earned savings should begin with a simple concept: putting their interests first.

I am disappointed, Chair Clayton, you do not see it that way. A decisive majority of the country surely does.

Thank you.

Chairman CRAPO. Thank you, Senator Brown.

And now we will turn to you, Chairman Clayton. You may make your opening statement.

STATEMENT OF JAY CLAYTON, CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

Mr. CLAYTON. Thank you, Chairman Crapo and Ranking Member Brown and Senators of the Committee. I appreciate the opportunity to testify today about the work of the women and men at the Securities and Exchange Commission over the past year, including our work to address the effects of the COVID–19 pandemic.

To begin, I want to thank you for the support and assistance that you have provided the SEC during my tenure. I have enjoyed the thoughtful and candid engagement, and, importantly, you have provided adequate and additional resources to help us expand and modernize our investor-oriented efforts.

I do wish circumstances would have allowed us to get together in person, and I hope to reach out to all of you bilaterally in the time that I have left.

Working alongside the dedicated women and men of the Commission has been the privilege of a lifetime. I am honored to call them colleagues and friends, and I could not be more proud of the work they have done each and every day on behalf of investors, especially this year in the face of incredible professional and personal challenges. Their dedication, combined with our strong, time-tested, and flexible regulatory framework, allowed the SEC to respond quickly to the health, economic, and other unexpected challenges we face this year. I am pleased to report that while the pandemic significantly impacted how we do our work, it did not negatively impact the work itself.

With respect to COVID–19, the SEC responded quickly by, one, providing targeted regulatory relief to ensure the continued operation of our markets; two, dedicating significant resources to COVID-related enforcement and examination efforts; three, increasing investor-focused oversight and engagement in key areas of stress; and, four, working closely with our domestic and foreign regulatory counterparts to monitor and mitigate the impacts of COVID–19.

Here I must thank the Treasury, the Federal Reserve, and Congress for their swift action to intervene in our markets and provide liquidity and provide support for our economy more generally through the CARES Act.

In addition, our traditional mission-oriented work continued with vigor, rigor, and transparency. During my chairmanship, recognizing the value of our time-tested regulatory framework, the agency has focused on modernizing the rules and regulations that implement that framework, some of which had not been meaningfully updated in many, many decades. As just a few examples, this year the Commission moved forward on a number of initiatives to: one, improve the proxy voting and shareholder proposal process; two, facilitate access to capital in our public and private markets and, in particular, with respect to our small and medium-sized businesses; three, modernize the fund disclosure and regulatory framework with an investor-oriented approach; and, four, improve and modernize our equity market structure.

Despite our mandatory telework environment, we have also continued our strong enforcement and examination programs, focusing on areas that are most impactful to Main Street investors, including through our teachers and military servicemembers initiatives and dedicating resources to address COVID-related frauds and other matters.

In addition, by leveraging technology, we have continued our robust outreach, education, and engagement initiatives to investors, entrepreneurs, and an array of market participants. Finally, the importance of diversity, inclusion, and opportunity to the Commission, the financial industry, and our society more generally was brought into stark relief by the events of 2020. Building on a strong foundation provided by, among other things, our Office of Minority and Women Inclusion and our Diversity and Inclusion Strategic Plan, we have continued to advance initiatives to further our collective commitment to these principles and to each other here at the Commission.

Thank you again for the opportunity to testify about the work of the Commission, the fantastic work of the women and men at the Commission, and I look forward to your questions.

Chairman CRAPO. Thank you, Chairman Clayton. And, again, thank you for the service that you have given as the Chairman of the SEC.

As I remarked in my opening statement, I am impressed by the rules that you have been able to modernize and improve during your tenure as Chairman. Your regulatory agenda has been and continues to be ambitious. You mentioned in your remarks that there is much work left to be done. Are there areas where you think the SEC should continue to focus or areas where you think Congress should take a closer look at the statute?

Mr. CLAYTON. Senator, let me tick off a few. First is corporate hygiene. I think in the pandemic and the stress, we have seen areas where corporate hygiene could be better. We need to remove any uncertainty that corporations are operating with transparency and rigorous governance. A few of those are 10b5–1 plans, option pricing, and what I call the "8–K information gap." I think that these are things that most—my views in this area are things that most good corporations follow. I have put this information out there, had discussions with Members of Congress. I think that is an area that we can learn from.

We also can learn a lot from our mandatory telework environment and not only the efficiency but the importance of electronic communications. We need to move our regulatory framework forward for all investors to an electronic framework. If people had not had—if this had happened 10 years ago, we would have had a problem. We would have had a real problem communicating particularly with our retail investors.

Not to take too much of your time, but I also think the proxy process needs improvement. Our 13(f) proposal revealed that companies do not have efficient access to their shareholder base. We need more efficient access to our shareholder base for companies. It benefits both companies and shareholders.

And, finally, in the area of ESG, we need to be rigorous in our approach to this disclosure area. I welcome the report from GAO on these components. I have discussed this in detail and look forward to doing so in the future.

Chairman CRAPO. Well, thank you. I appreciate that summary of where you think the SEC should focus, some of the issues that need to be focused on, as well as what Congress needs to be paying attention to. I appreciate that.

Along those same lines, the SEC was quick and decisive in taking action in response to the COVID pandemic and the tools that were used, such as the marketwide circuit breakers, oversight of the physical floors of the Nation's stock exchanges being closed in order to comply with CDC's guidance, undertaking swift enforcement actions to protect investors from fraud and illicit schemes and other misconduct, and providing temporary relief in a number of other areas.

The question I have is: As you reflect on the actions the SEC has taken in response to the pandemic, how do they shape the way the SEC should move forward? Specifically, are there temporary relief actions that you believe the Commission should consider making permanent?

Mr. CLAYTON. The short answer is, "Yes, many." The shift to a mandatory telework environment across our critical market infrastructure again showed the importance of being able to conduct business electronically and remotely. We provided a host of relief. We are assessing whether that relief in any way degraded investor protection or market integrity, and where it has not—and I think in many cases it increased it. Where it has not, we should make it permanent. It is that simple.

That said, I want to make a specific—there are people who do prefer paper at the end of the day, and I think that for those retail investors, we should continue to provide access to paper to the extent they want it. But investors are better off and the system is better off if we are all on a level electronic communication playing field.

Chairman CRAPO. All right. Thank you. And my last question is too long to get out and get an answer to in this, so I am going to ask you this question, but then you can please respond in writing. It has to do with the Uyghur Forced Labor Prevention Act, which passed the House by a vote of 406, and there is a similar bill, Senate bill 3471, that contains a number of restrictions intended to punish those responsible for the horrific human rights violations occurring in China's Xinjiang Uyghur Autonomous Region.

My question to you, which, again, I would like you to answer in writing, is: This legislation creates essentially a new disclosure regime at the SEC to deal with this issue. I am concerned about whether that is the right approach rather than utilizing existing pressure channels available to the Departments of Treasury, Commerce, State, Defense, and others. Is it your view that the SEC should establish a new disclosure regime rather than focusing on our existing regimes for punishing this behavior?

Again, I would ask you to answer that question in writing, but it is a very critical issue that I think Congress needs to get right, and I would like your advice on that.

Mr. CLAYTON. I am happy to do so.

Chairman CRAPO. Thank you.

Senator Brown.

Senator BROWN. Thanks, Mr. Chairman, and I echo the Senator's request on that question. That is an important question. Chair Clayton, thank you for the response that you will give.

When a broker borrows stock from a customer's account, Chairman Clayton, it has to provide collateral under the Customer Protection Rule, correct?

Mr. CLAYTON. That is correct.

Senator BROWN. OK. Last month, though, the SEC issued a no-action letter to FINRA acknowledging that certain brokers are failing to provide collateral as required, violating, we think, the SEC's Customer Protection Rule, and said it was OK as long as they fixed it within 6 months. Was that what that no-action letter said?

Mr. CLAYTON. I think it is much more nuanced than that, Senator, but, look, for purposes of this discussion, that is a fair way to say it. We gave a 6-month period for people to adopt practices that were clearly in line with the Customer Protection Rule, and this was particularly motivated by ensuring that SIPC protection applied in this case.

Senator BROWN. So how widespread is this problem in your estimation? Or why do firms need 6 months to do this when in the past they had not?

Mr. CLAYTON. It is not clear that they need 6 months to do it, but what is needed is a time for those types of transactions, stock out on loan and the like, to be unwound in what I would say is an orderly way so it will not adversely affect customers or the market itself.

Our staff in the Division of Trading and Markets, in consultation with FINRA, made an assessment that this was not a particularly—a situation where people were particularly at risk, but that, to use my word, we needed better hygiene across the stock-borrowing, what I would say, ecosystem.

Senator BROWN. Well, I understand what you said. I think it, again, plays into the belief that the SEC and this Government is a deeper swamp than it was 4 years ago. People feel that—folks on Main Street feel like the odds are stacked against them.

Let me switch here——

Mr. CLAYTON. Well, look, I could just quickly respond to that in that as soon as I became aware of this, it was days when this action was taken.

Senator BROWN. OK. Thank you.

Let me turn to stock buybacks, Chairman Clayton. The SEC recently brought a case against a company for doing stock buybacks while management had inside information about a merger, insider trading by most definitions. You called it a "failure of internal controls," even though the Legal Department signed off on the buybacks. Congress has called on you to revisit the stock buybacks rules. Many in Congress have. Doesn't it make more sense to have clear standards for companies to follow and avoid abuses instead of expending resources on weak enforcement activities?

Mr. CLAYTON. Yeah, let me say this about stock buybacks and 10b5–1 plans. As I mentioned in my response to Chairman Crapo, I think additional hygiene in this area is appropriate, Senator. Buybacks provide a very efficient way from a company's standpoint to manage their capital allocation and balance sheet. But I think it should be applied with good corporate hygiene, including policies and procedures to ensure that when they are put in place or restarted, a company does not have material nonpublic information. And for executives, I am a proponent of a cooling-off period, and that is that when you put your 10b5–1 plan in place, say you do it in June, there are no purchases or sales—in most cases it is sales with an executive 10b5–1 program—for a period of time. Now, whether that period of time is 3 months or 6 months or whatever it is, that gives everybody comfort that timing was not planned ahead, you know, that fortuity was not intent, and I think that is something that we should all explore.

Senator BROWN. OK. Thank you. I have worked on legislation—it is a little late in this session and under your tenure—that would create guardrails and prevent these kinds of failures and abuses. I think your comments were appropriate that we allow companies to still do buybacks, but they would have to provide real transparency, which they do not always, and would have to reward workers, not just shareholders. That is what I think the real solution is.

I will just close briefly with a bit of a statement. We saw earlier this year the pandemic crushing our families and hospitals and the economy, how the markets seized up. The SEC's recent report on interconnectedness in the market offers some insights but no real policy recommendations. I know that you and Vice Chair Quarles and Deputy Treasury Secretary Muzinich should have come and that the money market reforms from the last crisis were not good enough. But it is clear that your successor, the next banking regulators, the next FSOC Chair will need to reduce risks from interconnectedness and excessive leverage. The economy may in the future depend on it.

Thank you, Chair Clayton. Thank you, Mr. Chairman.

Chairman CRAPO. Senator Toomey.

Senator TOOMEY. Thank you, Mr. Chairman. And, Chairman Clayton, welcome back on what I gather is your final appearance before our Committee, and let me just take a moment to say I really appreciate the excellent work that you have done and the leadership you have provided at the SEC. In my mind, you have clearly advanced the mission that the SEC is responsible for, protecting investors and maintaining fair, orderly, and efficient markets, and facilitating capital formation. I particularly appreciate your efforts to expand investment opportunities for average investors. I appreciate the work you have done to create an environment where it is easier for companies to go public. And I also want to take a moment to tip my hat to you and your colleagues for the extraordinary, really extraordinary accomplishment of how we got through the unprecedented period where we shut down our economy; we sort of voluntarily closed our economy; we forbid people from going to work. And yet during that period of time, during the worst of that period of time, after a brief period where they completely froze up but then in response to our legislation, our capital markets reopened. They thrived. We actually set all-time records in debt issuances across the credit quality spectrum. We had no settlement problems. We had an amazingly efficient—in fact, we returned to being the world's deepest, most liquid, most efficient capital markets by far, and we did it with everyone working from home, the SEC working from home. And while there are a lot of people that deserve a lot of credit for it, I think you deserve your share as well, Mr. Chairman, so thanks for all that you have done for your service to the country.

I have got two big questions for you, if I could, and the first is about companies going public. As we all know, there are fewer of them than there once was, right? Companies wait until longer—they delay going public as long as they can, it seems. It seems that IPOs now are more often a liquidity event than they are a capital-raising event. We have far fewer investment opportunities for investors because we have fewer publicly traded companies, and we have fewer options for capital raising on the part of companies that feel like that is not a viable option.

So my question for you, Mr. Chairman, just a couple of brief thoughts if you have them: Is there more that we can be doing in Congress to create an environment where it is more attractive to go public earlier so that that is a viable option for growing businesses and it is a viable investment option for more investors? What else can we be doing to restore even more vibrancy to our public markets?

Mr. CLAYTON. Well, thank you, and thank you for the really kind words about the work of the Commission. I think if the American people saw what the women and men here did in that month of stress, they would be extremely impressed.

Your question is one that is kind of front of mind for me at all times. We have taken the JOBS Act, which was a terrific piece of legislation which did facilitate the move from being a private company to a public company, providing an on-ramp, and we have expanded access to the JOBS Act to companies, and I believe that has made a difference over time in the choice between staying private and becoming public.

I am not going to take a victory lap yet, but, you know, we are up on IPOs. You know, that may be market driven. It may be a result of our efforts. It may be a result of a lot of different things. But I am hoping that that choice was a better one.

I think that we have to recognize that one size does not fit all from a disclosure and regulatory perspective. I have no problem with many of what people would call "burdens," "frictions," whatever you want, in our system for large public companies. You know, can they be adjusted here and there and are we doing that? Sure. But for medium-sized companies—and I am going to say this, companies $100 million to a couple of billion or more—the same rigor and life that applies to a company with a $500 billion market cap just does not make sense, and we need to recognize that.

Senator TOOMEY. Well, thanks. I am going to run out of time here, Mr. Chairman, but, again——

Mr. CLAYTON. Sorry.

Senator TOOMEY. That is quite all right. I would suggest the JOBS Act has been remarkably successful. The vast majority of companies that go public actually use the emerging growth avenue that we created. I think we want to expand that avenue so that more companies can take advantage of it.

I also think we want to be very careful about the extent to which activist groups are trying to use corporate governance as a way to advance a social and political agenda that really ought to be advanced through the accountable elected branches of Government. But thanks for your service. I look forward to continuing the discussion.

Chairman CRAPO. Thank you.

Is Senator Menendez with us? I think he may have had to go offline for a minute. All right. Then let us move on to Senator Warner.

Senator WARNER. Thank you, Mr. Chairman. I appreciate this hearing.

And, Mr. Chairman, before I turn to questions, I also want to take a moment and thank the Chair for his service. Chairman Clayton has been someone that I have had a great working relationship with for 3½ years—can you hear me all right? Am I coming along, Mike?

Chairman CRAPO. Yeah.

Senator WARNER. OK. And while we have not always agreed by any means, I appreciate the partnership that we have worked on, on issues like improving the SEC enforcement tools, the Kokesh, which I want to get to at the end of my comments. But I really want to zero in on something that I first talked to you as you came into this job, and that is the question which I think is fundamental and will be one of your legacy items about human capital reporting.

You know, I think we all know that we have seen, even prepandemic, a fundamental transformation in overall investment strategies. We have seen that companies are investing much less in tangible goods and much more in intangible goods, and oftentimes those intangible goods are human capital.

We have talked about the need for potentially doing tax accounting, reporting transition. I may be a little further down the path than you on some of those issues, but I really appreciate the fact that you have taken this issue on with seriousness and rigor and really laid down the first step, and you did that by putting forward your revised Reg. S–K regulations that finally for the first time—and I would argue for the first time and we have more to go—requires some level of human capital metrics for companies to report when you talk about—every CEO I know talks about their assets being their workforce, yet there is no place that that is reflected on their balance sheet. There is no place that is reflected in their SEC filings. I think by these revised S–K rules, you are starting us down this path toward a more worker-centric management structure. And my hope is, while you have, I think, taken this on as a principles-based approach, that we will see both an increase in the quantity of this reporting as well as the quality, and I think it is terribly important that we ultimately get enough data in place where there is allowed to be a baseline that would allow some comparison between industries on this important topic, and I know we had to start someplace, and you have started that discussion.

I say you have noted in your written testimony that you believe the principles-based approach will lead to quantitative disclosure by firms and deem the information to be material. Can you talk about how you see that occurring in practice and then how we make sure that this is just not nice to have but that more and more firms will actually believe this human capital component falls into the materiality category and that they will take it with the kind of seriousness that I know you do and that I hope we will see the whole business community move toward?

Mr. CLAYTON. Yes, thank you, and I believe that the disclosure requirement that we put in place will facilitate both qualitative disclosure, how do we look at our workforce, and like you said, in a number of industries, it can be the entire company. It can be 30, 40 percent of the value on the balance sheet. Depending on the industry, I would expect turnover, turnover in particular areas, to be a metric that people might show. Now, in some industries that is not very relevant, but in others it is. What I would say with sector-specific within skill sets, engineers, how many engineers are people actually bringing onboard. How difficult is it to hire them? So there will be qualitative and quantitative disclosure.

We should understand what management believes drives the value of the business from a human capital perspective, and that is the core requirement. And I think it is—look, it is the way I look at things at the SEC. What is our turnover? You know, and from a topic that is current today, from a diversity and inclusion standpoint, we are tracking those metrics at the SEC, and I have them front of mind. If I were a public company, I would expect to disclose them.

Senator WARNER. Well, one of the things—I appreciate that and, again, you had to be the guy to set the framework, to get this out of the discussion stage, to start having companies putting this reporting in place. You have heard and my colleagues on this Committee have heard I think we need to go further. I always point out the problem, you know, in terms of tax and accounting, you know, a company buys a robot, you get an R&D tax credit, that robot is an asset on your balance sheet. The accountants have recognized that. If the same company invests in two human beings being more efficient than the robot, they are not given the same tax treatment, and that investment is not viewed in a category on the balance sheet as an asset class. And I know you are coming down to your last meeting or say, and, Jay, I do not want to get you further out over your skis, but I told you I wanted to push you on this a little bit. You know, my hope would be that you would say you are at least open to ongoing engagement with FASB. I think the Commission has a role of overseeing FASB, that we ought to at least reopen the discussions or start discussions about accounting treatment of investment in human capital. I think we ought to look at tax treatment of investment in human capital. Do you think we are—you know, we have taken the first step by having at least de minimis reporting. I think the next step ought to be tax and accounting review, and I would love in my last minute or two for you to make a comment on that.

Chairman CRAPO. Actually, you are about 2 minutes over, Senator Warner.

[Laughter.]

Senator WARNER. Where is your clock, Mike? I thought you were going to put a clock up here. I was trying to—I will let Chair Clayton, since we have had this discussion repeatedly, take that one for the record. But I would love to—you know, if you will let me help draft your answer so I can share it with Chairman Crapo and some of the others afterwards so I can nudge him on a going-forward basis. But let me just again say, Jay, thank you for your service, and I think you have done a great job and I look forward to continuing the discussion.

Chairman CRAPO. Thank you. And the tone that I told everybody we were going to play does not appear to be working.

Senator WARNER. I know. I was waiting for the exit music, Mike. I got nothing. I have got somebody in my ear saying, "That is a great question, Warner. Keep"——

[Laughter.]

Chairman CRAPO. I guess I will just have to try to remember to tap the clock or something, but please, folks, watch the clock. We are trying to solve this. Thanks, Mark.

Senator WARNER. Thank you.

Chairman CRAPO. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman, for my 12 minutes that I have now.

[Laughter.]

Senator SCOTT. Thank you so much for my time. I will use every minute plus 15 on top of that. Thank you so much.

Chair Clayton, thank you for your service to our country. Without any question, having had the opportunity to work with you, I know that your agency's focus has been on Mr. and Mrs. 401(k). The average investor in our country through their retirement funds may not appreciate the way that you have really focused on simplifying some of the language and making it easier for the investor to engage. You know, Mr. and Mrs. 401(k) or the Main Street investor may not be able to pinpoint exactly which amendment to the 1934 Act or the tweak to the 1940 Act that allowed them to safely and affordably access the advice or products needed to meet their investment goals, but I am glad you and your team at the SEC have been so diligently focused on protecting these investors. That is a really big key, and you think about the fact that only half of U.S. households own stock at all and the average portfolio is about $40,000, that is a really important engagement when the average investor can understand and appreciate in a simplified manner what they are investing in and the rules of the road, so to speak. You take that number and you cut it down by 31 percent for minority investors, Hispanics and African Americans, that number drops precipitously.

Fortunately, technology and innovation has recently improved the availability of simple, low-cost investment platforms that can be accessed by investors with a smartphone and as little as $20 now to see their dreams come true. A broad chunk of young and diverse Americans are now more engaged in the stock market, including many millions who are doing so for the very first time.

Can you, Chairman Clayton, please discuss the benefits of the increased participation and if the Commission's regulations are keeping up with the pace of innovation?

Mr. CLAYTON. Thank you, Senator Scott. I believe and I know the people here believe—and the pandemic demonstrated this—that being connected to our financial system, having a bank account, having an investment account is essential to participation in our society. We saw this in the CARES Act relief. You could get relief faster to people who were connected. We want to increase those connections, preserving investor protection, and as you mentioned, driving down costs.

Look, we are hell-bent to get at fraud and prevent fraud, and we have, you know, a thousand people in the Enforcement Division, 1,300 there, actually a thousand of people in Inspections, that is their job. But if we can reduce costs for the average American by 25, 30, 50 basis points over the course of their retirement, the benefits to society are astronomical. And technology should be enabling us to do that. So get connected, get educated, and get the frictions down.

Senator SCOTT. And, Chair Clayton, I will just end with this note, trying to respect my minute and 30 seconds that we have left. Access, as you just discussed, is so critical. It has never been more accessible than it is today. I was talking with my nephew, who is a resident, and his friends are now engaging in investments using multiple platforms in a way that was unimaginable and, frankly, cost-prohibitive 10 years ago, 15 years ago. So we are moving to a place where the average family, the average person, will have access to the stock market, and the most important point with that increased access is having integrity in the system. So thank you for spending quality time insulating those smaller investors by making sure that there is lots of integrity and, in my opinion, a synonym to integrity in this case would be transparency, and digestible, making sure that the language is such that the average person that is investing—I heard the bell, so does that mean that Senator Warner just ignored the bell?

[Laughter.]

Senator SCOTT. But it is important to continue to work really hard at making sure that the average investor has confidence in the system. And I appreciate your office taking the average person's perspective on something that is very complicated and sometimes hard to understand.

With that, I yield back my last 3 seconds.

Chairman CRAPO. Thank you, Senator Scott.

Senator Menendez.

Senator MENENDEZ. Chair Clayton, thank you for your service and best of luck as you move forward. The last time you were here, we discussed how foreign actors could evade the beneficial ownership disclosure requirement under Section 13(d) and the negative effects that could have on publicly traded companies, particularly in the media and technology sectors, their investors in the U.S. national security overall.

Given the ongoing pandemic and the ensuing economic crisis, we need to continue to be vigilant against any malign foreign actor that could be looking for an opportunity to purchase a significant stake of a distressed company without filing the requisite disclosures.

So has the SEC made any improvements to your 13(d) oversight, as we discussed this last year? And have you identified any statutory impediments that prevent the agency from sufficiently monitoring or enforcing potential 13(d) violations?

Mr. CLAYTON. So, Senator, I agree with you, and I think our friends at the Treasury would agree with you, that understanding beneficial ownership and whether there is any evasion of 13(d) is very important. We did take a recent measure that I want to highlight for you. We just put out what I would call guidance, but you can also call it, you know, good hygiene in brokerage accounts—foreign omnibus accounts, accounts that mix ownership of different parties outside the United States, and then trade, what I will say, through a single pipe into the United States. I believe that they have been used to mask ownership, and we need to ensure that the U.S. broker-dealers, particularly—and this guidance comes out in the area of thinly traded and low-priced securities—are doing the appropriate diligence on those foreign omnibus accounts. So what I can do is assure you that we are focused on this area, and we are not just studying it; we are doing things about it.

Senator MENENDEZ. Well, I appreciate that, and I am particularly concerned about media and technology companies that are responsible for delivering unbiased and objective reporting of current events to the American public. And in these times, they play a special role in disseminating critical public health information so we can get the pandemic under control. I hope that your successor and the rest of the members will continue to prioritize this.

I have seen elements of foreign entities purchasing and having significant controlling interest, and, you know, in and of itself that is not a terrible thing, but understanding the nature and having the disclosure so we know who is affecting these public information channels I think is incredibly important.

Let me turn to another topic. Studies have consistently found that greater diversity on executive teams have led to greater profitability and, therefore, better outcomes for shareholders. McKinsey's most recent diversity report found that companies with more gender diversity on their executive teams were 25 percent more likely to have an above average profitability than companies with non-diverse teams. That same report found that companies that with the most ethnically diverse executive teams are 33 percent more likely to outperform their peers on profitability.

So do you agree with these statistics that find companies with more diverse executive teams as more profitable?

Mr. CLAYTON. Well, I have looked at that report, and let me just say what we do here at the SEC. We do believe and have acted on diversity and inclusion not only as the right thing but as value-enhancing, and I have seen firsthand, as we have increased inclusion here, that it has led to better performance.

Senator MENENDEZ. Well, I appreciate that, but I would like us to go beyond that. I think that in a marketplace, forgetting about doing the right thing, that simply in a marketplace where you have a trillion-plus dollars of domestic spending in the Hispanic community, for example, younger by a decade than the rest of the American population, more brand-loyal than any other group, and spends more of their disposable income, as a business proposition I would like to be on them like white on rice, understanding, however, the nature of the community having seen your people on corporate boards and senior executive management, good for the bottomline.

My final question. Section 956 of Dodd-Frank requires the OCC, the Federal Reserve, FDIC, NCUA, FHFA, and the SEC to jointly propose an executive compensation rule to prohibit unsafe and unsound compensation plans.

During your time as the SEC Chair, have all six regulators sat down together to discuss this rulemaking?

Mr. CLAYTON. Yes, we have. If you consider conference calls sitting down together, yes, we have.

Senator MENENDEZ. OK. And what did these discussions ultimately lead to? Have you decided to move forward with a proposed rule?

Mr. CLAYTON. Well, all I can say is we were at advanced stages on—I will say it this way, kind of corporate-speak. We were at advanced term sheet stages. But, you know, bandwidth has been constrained in some areas, particularly that kind of coordination, bandwidth is constrained by the events of the day.

Senator MENENDEZ. Yes, well, I would just say that it seems that sometimes the bandwidth on things we do not really want to deal with seems the most constraining, but thank you, and good luck in your future.

Mr. CLAYTON. Thank you, Senator.

Chairman CRAPO. Senator Cotton.

Senator COTTON. Thank you, Senator Crapo. And thank you, Chairman, for your appearance before us today, which I assume will be your final appearance. I am sure you hope so.

[Laughter.]

Senator COTTON. I want to thank you for 3½ years of service to our country at the SEC, and thank you for being a good partner to my office when we agree, and especially when we do not agree, and the open lines of communication you have had and representing the people of Arkansas.

I would like to speak today about a topic that we have discussed in the past, both at these hearings and directly one on one, and that is the concept of regulation by enforcement. This is something that became infamous under President Obama. It is the act of using court rulings or administrative decisions to make changes in the rules as opposed to the notice and comment rulemaking process under the Administrative Procedures Act. It often means that enforcement decisions are based on things that regulators may or may not like, things that remain opaque and sometimes even unknown to regulated players in the market.

Do you agree that enforcement actions should only be taken when an actor in the market violates rules, rules that have either been written by Congress in law or passed into regulations by an agency like yours?

Mr. CLAYTON. Senator, I do. I want to qualify that by saying, you know, some rules rely on facts and circumstance application, but to the extent you are asking me should we expand authority or regulation without going through notice and comment, no, we should not. We should do that.

Senator COTTON. I think it is a fundamental principle of the rule of law, which in some way predates the concept of self-government that it is hard to have an ordered society without clear and established rules known in advance that all citizens can obey and up-hold. And that is irrespective of whether or not you agree with the laws or not. It is so vital that we have established written rules in advance.

One example that we discussed before and that I want to discuss here today is the SEC's Share Class Selection Disclosure Initiative. Under that initiative, several firms were fined partly because they did not list three items in their disclosure: one, that a firm received 12b–1 fees; two, that cheaper shares of the same fund were available; and, three, that purchasing fund shares that paid 12b–1 fees when cheaper share classes were available would adversely affect the client's return.

Again, these may be best practices for financial disclosures, but that is not exactly what we are talking about here. We are talking about having clarity in advance of any enforcement decision.

Can the SEC cite a public document where all three of those elements were listed in advance of any of these enforcement actions, Mr. Chairman?

Mr. CLAYTON. Let me put it like this: I do not have a document like that to hand, but I understand the issue very well. This was investment advisers engaged in their clients. They have a duty to those clients not to put the investment adviser's interest ahead of the client. They also have a duty of candor.

Let me give you a stark case. You tell somebody, "I am going to put you in the best option for you from a cost perspective, and you have two choices. One has a higher cost; one has a lower cost. But otherwise they are exactly the same." There is no doubt that that is a violation of that obligation.

The Share Class Disclosure Initiative, what we tried to do was efficiently deal with what we saw was a widespread practice that was inconsistent with law. But, Senator, these are all facts and circumstances situations, and I understand that some people felt that they were within the bounds of the law when we felt they were not.

I am hopeful that there has been clarity brought to this, more clarity brought to this, but I am also comfortable that the Enforcement Division pursued this believing and having that belief based on rigorous analysis that they were on the right side of the law. But I very much take your point that we should not, you know, use ambiguities or uncertainties in the law to our advantage.

Senator COTTON. Well, let me conclude, Mr. Chairman, about the Enforcement Division action in this case, something that Commissioner Peirce said. The Division used prior settlements which have never been tried before a judge as precedents that advisers violated the disclosure obligations. In effect, the agency short-circuited the required rulemaking process by adopting a regulation through enforcement rather than through a rulemaking. I take it you disagree with Commissioner Peirce on that point?

Mr. CLAYTON. Well, I agree with part of what she said, and that is, I believe using our administrative courts for matters like this, we need to do so cautiously, if at all. And I wish that precedent were in an Article III court.

Senator COTTON. OK. Well, I will cut it off there since we are hearing bells ringings, but since we are going into the Christmas season, maybe that means an angel is getting its wings every time a Senator runs over his time.

Chairman CRAPO. Yeah, that is right. You may not have been on when I announced that I am having a tone rung at 30 seconds and at the end of the 5 minutes, because Senators do not seem—some Senators do not seem to be able to find the clock on their screen.

With that, Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

So the SEC's job is to protect our economy by ensuring that investors have the basic information they need to make good investment decisions, and that is why the SEC requires publicly traded companies to disclose things like outstanding lawsuits or pay for top executives. You know, if a company looks like a bad bet, then an investor could decide to put her money somewhere else.

Now, in order for the SEC to make sure that companies stay honest, disclosure rules have to keep up with changes in our economy. And one of the biggest changes bearing down on our economy is climate change. Extreme weather events, rising sea levels, increasingly scarce resources—these all pose huge risks that big companies must navigate. Policies moving us toward clean energy are going to have a big impact on companies that are still dependent on dirty energy.

So while the crisis has gotten worse, the SEC under your leadership has done nothing, and that has resulted in multiple problems. So I just want to go over the list. I thought we might do this together. Uniform standards for climate risk reporting. Chairman Clayton, has the SEC established a mandatory uniform standard for reporting on climate risk so that investors can compare companies head to head?

Mr. CLAYTON. If you mean a standard metric, like, you know, a carbon emission metric applied across our 6,000—whatever the number is——

Senator WARREN. No. I mean a mandatory uniform standard, however you do it. I just want to know. Have you got a mandatory uniform standard?

Mr. CLAYTON. To the extent that climate-related risks are material to the company's performance and prospects, they have to be disclosed, and we have outstanding guidance to guide companies on how to——

Senator WARREN. I understand you have some guidance, but I have read that guidance. That guidance does not establish a standardized framework. I am asking about a mandatory uniform standard, and I think your answer here—one word, yes or no?

Mr. CLAYTON. It depends on what you mean—we do have a materiality standard.

Senator WARREN. You do not know what a mandatory uniform standard——

Mr. CLAYTON. Well, I do not know what you are——

Senator WARREN. You have no uniform standards for reporting. What about——

Mr. CLAYTON. No, I disagree.

Senator WARREN.——at least mandating that companies report something? Chairman Clayton, has the SEC mandated that all publicly traded companies report something about climate risk so that investors can compare those companies head to head?

Mr. CLAYTON. To the extent it is material to an investment decision——

Senator WARREN. No, that is not what I asked. I asked the question about requiring all publicly traded companies to report something. They may decide to report that they have no risk at all, but do you require that?

Mr. CLAYTON. We do not require them to report that they have no risk at all.

Senator WARREN. OK. So right now, we have got these huge gaps in the SEC's disclosure rules that basically allow a company, either to conceal or to downplay climate risk from investors. So how do the investors feel about that? How do the pension funds and the university endowments that are trying to make long-term investments or socially responsible investments feel about the SEC's failure to require full and consistent reporting of climate risk?

Well, this summer, 40 major investors who collectively manage over $1 trillion in assets joined with nonprofits, businesses, and former regulators in sending you a letter arguing that the climate crisis is material and a systemic threat to our economy and asking the SEC to mandate corporate climate risk disclosure.

And then, just last week, the Federal Reserve's Financial Stability Report stated that, "Increased transparency through measurement and disclosure could improve the pricing of climate risks." In other words, more information on climate risk is good.

So, Chairman Clayton, how do you explain to these investors, these businesses, these nonprofits, and even your fellow regulators that they are somehow better off with less information about climate change?

Mr. CLAYTON. Well, that is not what I would say to them. I would say, "You are better off with good information." I can tell you that I was up early this morning for a lengthy discussion with my IOSCO friends Mark Carney and others that has been ongoing as to how to actually address—and I am supportive of the Federal Reserve's report—how to actually address this issue in a meaningful way. And I——

Senator WARREN. So let me just ask——

Mr. CLAYTON. I am happy to——

Senator WARREN.——I am getting letters from investors asking for climate risk information. Now, obviously, they are not getting it, or they would not be asking. So I want to know: Have you been getting letters from climate—from people representing over $1 trillion in investments? Have they sent you public letters asking you to shield them from getting climate risk information?

Mr. CLAYTON. No, but they have asked me to get them good information, good decision——

Senator WARREN. I would like to see those letters from those who say they do not——

Mr. CLAYTON. It is not—no, I——

Senator WARREN. You know, I——

Mr. CLAYTON. What people want is decision useful information.

Senator WARREN. Yes, that is why they sent you letters asking for climate risk information. You know, I have a bill with Representative Casten that would force you to do your job and require publicly traded companies to disclose information about their climate risks. But the SEC does not have to wait for Congress to pass a law. You already have the authority to require companies to provide this information, and you have refused to ask.

Chairman Clayton, climate risk—climate crisis is an existential risk. We need a new SEC Chair who will put this climate crisis at the top of the agency's agenda.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

First, Chairman Clayton, let me begin by saying congratulations on the upcoming end of your tenure as Chairman, and thank you for all the hard work that you did while serving at the SEC. You have accomplished a great deal as Chairman, but one positive development that I would like to highlight is the SEC's expansion of people and entities that qualify as "accredited investors" under Regulation D. In particular, I was pleased that the SEC expanded Regulation D to include Native American Tribes. These reforms will make it easier for Tribes to participate in investment opportunities while also putting Native American Tribes on more equal footing with other investors and market participants.

In considering the changes to Reg. D, particularly as it relates to Native American Tribes, are there additional ways the SEC and Congress can help level the regulatory playing field for Tribes?

Mr. CLAYTON. The short answer is yes, and this is an issue I was not aware of when I arrived here, but I had a nice meeting with representatives of a number of Tribes and realized that they were not being treated fairly under our credit investor definition and some of our other definitions that provide access and opportunity for institutional investors.

In short, they should be treated like any other institutional investor, like a pension fund or the like, and I believe we are going to be doing that going forward.

Senator ROUNDS. Great. Thank you. Look, I appreciate that. I know that the Tribes in South Dakota have an interest specifically regarding that, so I appreciate the work that you have done.

I am also sure that you have been closely following the conversations in State legislatures and city councils about imposing a financial transaction tax on security trading. These developments concern me for several reasons, chief among them because it would hurt both Main Street investors and institutional investors like the South Dakota Retirement Fund. South Dakota is a low-tax, business-friendly State, and I would like to say to any of the businesses that may fall victim to a financial transaction tax, health fund in the United States, whether you are an exchange in Manhattan, a data center operator in Syracuse, or a commodities trader in Chicago, you are welcome in South Dakota.

Chairman Clayton, how do you see our securities market evolving if one or more State and local jurisdictions impose a financial transaction tax?

Mr. CLAYTON. You know, a couple things just to highlight to think about. One is that transaction taxes, whether they are in financial services or other places, the incidence, you know, largely falls on the end user, so in our case the investor. Some of the frictions are absorbed by intermediaries, but at the end of the day, experience shows that. So they should be approached with that in mind, that the incidence in the tax falls on the person who uses the investor at the end of the day.

The other thing is if we do have a piecemeal approach to a transaction tax, you are going to have critical infrastructure moving in response. You know, tax policy causes adjustments, and if we have our critical infrastructure moving from one jurisdiction to another for more favorable tax treatment, from my perspective that creates operational issues that we need to think about.

Senator ROUNDS. Thank you.

With regard to proxy advisory firms, there have been discussions about their impact, whether or not there should be more disclosures. Just in broad terms, in the time I have left, what are your thoughts regarding any regulatory activity that should involve proxy advisory firms? And where are we at right now, in your opinion? Are there other issues, are there concerns that you would like to express to this Committee regarding the firms, the impact they have, and whether or not additional regulatory activities should occur regarding them?

Mr. CLAYTON. Let me try levels at this and a perspective going forward. I am sorry I am not going to be here in the future, but the proxy process is designed to approximate the quintessential shareholder meeting, and if you have somebody, you know, at that shareholder meeting who is soliciting votes one way or another, you want to know their interests.

Now, just what we have done in our rulemaking is apply that concept to the proxy advisory firms and said to the extent you have material—and, again, material, not absolute—material conflicts that a reasonable person would believe would affect your advice, you should tell them. I think with that paradigm, you know, virtual shareholder meeting is a good way to look at it. Also, try to provide an opportunity for engagement so that shareholders can hear both sides or multiple sides or diverse views and make an informed decision. That is how I look at it.

Senator ROUNDS. Thank you. Thank you for your service, and thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Schatz.

Senator SCHATZ. Thank you, Mr. Chairman. And, Chairman Clayton, I want to thank you for your public service. Our engagements have always been good and respectful, and sometimes we even find areas of common ground.

I want to follow up a little bit on our ongoing conversation about climate risk. Last year, we discussed the SEC's enforcement of its 2010 guidance on climate-risk disclosure. You and Senator Warren had a brief exchange about that about 15 minutes ago. Where is the Division of Corporation Finance on the enforcement efforts? Could you give me an update?

Mr. CLAYTON. So here is where we are, Senator, and I want to make it clear that this is an area where, for certain sectors and certain companies, you know, we all believe disclosure is required. It is material. Different sectors, different ways.

What we have been doing—like I said, I just got off a long conference call this morning with IOSCO, you know, Task Force on Climate-Related Disclosures. How do we drive the standards that are meaningful? And I think we are all gravitating toward the view that these need to be sector-specific. It is very hard—this is all forward-looking information. I am sorry I am going to take so much time, but I need to say this. It is really hard to make forward-looking disclosure that is going to be accurate over time. We all know that, anybody who has been a securities law. We need something to disclose against, and whether that is carbon neutral by 2050, you know, how am I going to get my company carbon neutral by 2050, whether it is some other regulation, you need something to disclose against.

We are working on that, and I believe, for example, in the property and casualty industry and in certain industries, you can start to see metrics where people will gravitate toward—you know, as regulation changes. But this is a vexing issue. We are on it.

Senator SCHATZ. Sure, and I think the area of common ground—and this is really worth lingering on, at least for a moment—is that these risks are material. The FTC does not need additional statutory authority to require these disclosures, but—and this stuff is hard, and we are going to need some uniform platforms and disclosure requirements so that it is not sort of everybody inventing their own disclosure technique, either by sector or even by individual company. So we actually have a fair amount of common ground here.

As you know, the United Kingdom announced last week it would require companies to disclose the financial impacts of climate on their businesses by 2025, and this is where we may have a disagreement, because it is not just against potential regulation; it is against what is currently happening. Right? You have physical——

Mr. CLAYTON. It is both. It is what we see now and what we see in the future.

Senator SCHATZ. Right, but this is not just about regulatory risk, political risk. This is about physical risk to property, to farms, to aviation, to tourism, whatever it may be. The question I have for you is: How deeply are you engaging bilaterally with your international counterparts on their plans? I think it is fair to say other countries and other regulators are a little further along. They are going to get wrapped around the axle on that particular question. But how deeply are you engaged in your international counterparts? And what is the next step for the SEC?

Mr. CLAYTON. Deeply as in we—let us say monthly if not weekly at a very substantive level, because we need to be humble about this. Let me give you a financial comparison: backlog. A company discloses backlog. That is a forecast of how much they are going to be able to sell in the next 2 years. Backlog numbers usually prove to be meaningful but somewhat inaccurate. We need to try and get disclosure that people recognize is that forward-looking, gives you an assessment of the risks, but people are not going to be held to precision. They are not going to be held to metrics. And that is a very important way to approach this. This is not how did you do last quarter or what were the effects. This is what are you thinking about going forward, because I was an advocate for—I believe we will get better disclosure and move this forward if we have a safe harbor that—you cannot fraud, you cannot lie, you cannot do those kinds of things, but people need to know that if they miss their forecast, they are not—you know, in a good-faith way, we need that forecast information. We cannot deter it with, you know—anyway, you know what I am saying.

Senator SCHATZ. Yes, I do get it. The one thing I will close with here is that we have actually moved along pretty nicely over the last several years on this question because we have gotten to the point where we can all agree, I think, this stuff is hard. It is highly technical. There is work that needs to be done through the network, the financial system, the Bank of England, what you are doing, what the Fed is doing. All of this stuff is not easy. But where we were, I think, 3 to 5 years ago was because this stuff is difficult, it is, therefore, unknowable and it is, therefore, permissible to book the risk at zero. The risk may be difficult to quantify, even in terms of ranges, but everybody knows that the risk is not zero, and so we have got to put pen to paper and do the hard work, and I appreciate your partnership with us.

Chairman CRAPO. Thank you.

Senator Tillis.

Senator TILLIS. Thank you, Mr. Chairman. And, Chair Clayton, thank you for being here. I want to first just thank you for what I think has been excellent work in your tenure, and my staff have high regard for the people that they have had an opportunity to work with over there.

Before I ask you a few specific questions, when you were first moving into this role, I was really trying to emphasize regulators that were going to go out, take a look at the organization, and right-size some of the either regulatory or guidance requirements that your particular agency is responsible for. Can you tell me a little bit about what you have just done internally, what you have taken on yourself, and the things that you are most happy with under your tenure?

Mr. CLAYTON. Well, it is nice of you to ask that question. We have looked across the landscape of our rules and seen which ones have not been touched in years and tried to modernize them and bring rationality to them. And, you know, in some cases we have increased regulation. We have increased the regulation of broker-dealers when they deal with customers significantly. And in some cases we have cut red tape. The patchwork system that is our exempt offering framework, that it was built up over 30 years, you know, we made the seams between the patches a lot less rough. And so you do not need an army of lawyers to figure out how to get clearly qualified investors into an investment.

Senator TILLIS. Well, I for one think you have done a great job, and there are some specific things you and I have had more than one conversation over. The one in particular was the rule back in July over proxy advisers. Can you explain why you think that was worthwhile and important to people who may be watching this?

Mr. CLAYTON. Well, I think anytime you have a participant in our marketplace who is soliciting votes or providing, you know, investment advice, understanding their conflicts is important, their material conflicts. So I think that is very important. And to the extent that you are participating in a shareholder meeting, you want that engagement at a shareholder meeting to be as meaningful as possible.

So I think in many ways we codified best practices, brought transparency, and I hope it will lead to better decisionmaking by investors.

Senator TILLIS. I want to actually touch a little bit more on the shareholder process. I appreciate the work you did there. But you have also worked on updating the rules regarding the shareholder proposal process. Do you mind expanding on the steps the SEC has taken under your leadership on this issue?

Mr. CLAYTON. Sure. That process, parts of that process, material parts of that process have not been updated since the 1950s, so, you know, almost 70 years ago. And those were the days of the mails and the like. So what we did was on the proposal process, we looked at what a demonstration of a meaningful stake in the company is such that you can take up the time and attention of the other shareholders, such that one shareholder—I mean, this is an amazing system. You can be one shareholder having $2,000 or more, and if you have held it—under our new rules, if you have held is for 3 years, you can take the time and attention of all other shareholders on your proposals. You know, that is part of our system. But what is the amount you need to do to demonstrate the level of commitment that allows you to demand that time and attention of the other 20,000, 30,000, 40,000, 50,000 shareholders for them to go through the proxy?

We updated that. We said you have $2,000, OK, that is a good minimum threshold, but a demonstrated commitment is 3 years. If you have held it less, you know, you need a little bit more of a financial commitment, because, you know, you are proposing changes for the long term, you should demonstrate that you are in there with those other shareholders.

And then on the resubmission thresholds, they were outdated. It was that if you—you know, you could get less than 10 percent of shareholders—you know, more than 90 voting against it, you still had the opportunity to resubmit. If you got more than 10 percent after a few times, you could submit it, you know, for lack of a better term, into perpetuity. We tiered those, but we did not say you are out forever. We said you have got to take a time-out. So I think we did a very good job.

Senator TILLIS. And just a final question. I have some other ones I may try and submit for the record. But what is next? What else should we expect in your remaining weeks on the job?

Mr. CLAYTON. Well, continued focus on COVID and the integrity of our markets. We have a few more rulemakings on our agenda, but just business as usual.

Senator TILLIS. Well, again, Chair Clayton, I appreciate the great work you have done. I especially appreciate how accessible you have been, and I am sure that I join the majority of my colleagues thinking it has been a great run, and I appreciate your service.

Thank you, Mr. Chair.

Mr. CLAYTON. Thank you.

Chairman CRAPO. Thank you.

Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. I too want to start by thanking you, Chairman Clayton, for your public service, for the open lines of communications that we have had, whether we agree on an issue or disagree on an issue.

I want to talk about a couple of areas where I think we agree, but I have been, you know, frustrated that we have not made more progress recently and maybe tee up some action items for all of us, including the SEC going forward. And these are all designed to do what I think we all want, which is to provide accountability for insiders and corporate executives and transparency for investors.

So on the issue of accountability and making sure that insiders are not exploiting unfairly information they have, you mentioned already the SEC rule 10b5, which allows executives an affirmative defense to insider trading if they essentially provide a schedule for their stock sales. But we have seen a number of incidences recently which, at the very least, I think undermine public perception that people are not using insider information. Most recently was the Pfizer time stock, the CEO of Pfizer, as you know, the stock sale occurred on the very same day that they announced their breakthrough on a COVID–19 vaccine. That stock sale had been scheduled in August when the CEO changed their plan, their scheduled sales plan. And I heard you mention earlier, you know, putting guardrails up against this, maybe 3 months or 6 months. I really think we need to act. We also saw a similar situation with Moderna where, after announcing their progress toward a COVID–19 vaccine, their stock price increased, and then certain Moderna executives changed their 10b5–1 plans and as a result made an additional $4.8 million in profit.

Again, this is currently legal, but I do believe it undermines public confidence in the system. And I want to know if you agree and whether you would encourage us to work to put up tighter guardrails against potential abuse and certainly a public perception that undermines confidence.

Mr. CLAYTON. So I want to be very clear I am not commenting on any particular case, but as a general matter, I agree. And I do think that how we craft it, you know, people have different views, but for—let me just say it this way: For senior executive officers using 10b5–1 plans to sell stock, I do believe in a cooling-off period from the time that the plan is put in place or it is materially changed until the first transaction is appropriate. And whether that is 4 months so that you cover a full quarter or it is 6 months, you know, I can make arguments for either. I do think we should do it.

Senator VAN HOLLEN. I appreciate that. Well, Senator Fischer and I have a bipartisan bill that we have introduced to encourage the SEC to look at this and do a rulemaking. It passed on a bipartisan basis in the House. I am going to ask Chairman Crapo if we can look at it and maybe even pass it before the end of this year.

Let me ask you a question regarding transparency in country-by-country reporting, because you stated at a hearing in the House on June 25th that, "I want to be clear. It"—you were referencing country-by-country reporting—"is becoming an increasing part of how sophisticated investors are looking at companies."

And we have seen that 100 percent of investors managing a total of $2 trillion in assets who weighed in with the Financial Accounting Standards Board urged the Board to include country-by-country reporting on GAAP. Is this an area where you also would agree that more transparency would help investors?

Mr. CLAYTON. Yeah, let me say this: I am not sure I can give you as absolute and as specific answer as I did to the last one. But to the extent that in the management and the boardroom people are looking at drivers on a country-by-country basis, I would hope that in the MD&A section of disclosure that companies would be disclosing that to their investors. So it is much more a company-specific issue, but yes.

Senator VAN HOLLEN. Right. Another area where, again, there is legislation to provide that kind of transparency, which it seems to me that it is hard to argue providing investors with that useful information.

Mr. Chairman, I will follow up with a question for the record regarding something that Senator Brown raised regarding stock buybacks and insider trading, and I have talked with Chairman Clayton about this issue before. One of his former colleagues, Commissioner Jackson, was involved in this, and since his findings, Lenore Palladino at the Roosevelt Institute issued a paper finding a very, very clear correlation between stock buyback activity and insiders selling their own shares. I think this is another area that we have got to look at going forward. Maybe even after you leave public service, Mr. Clayton, we can work with you on that and get your input.

Mr. CLAYTON. Thank you. I love markets, so love investors. Happy to help.

Senator VAN HOLLEN. Thank you.

Thank you, Mr. Chairman.

Senator BROWN [PRESIDING.] Thank you, Senator Van Hollen.

Senator Kennedy is next. Chairman Crapo is voting, so, Senator Kennedy?

Senator KENNEDY. Thank you, Mr. Chairman. I am in a Judiciary Committee hearing and, of course, we are in the middle of a vote, so I just wanted to use this opportunity, rather than to ask questions, to make a short statement specifically to Chairman Clayton.

I want to thank you for your service, Mr. Chairman. We understand that you will be leaving your post at the end of December. I want to just give you my point of view. You have been one of the best SEC Chairmen our country has ever had. You have been fair. You clearly care about investors. You also care about the investments. You have exercised power intelligently and materially, Jay.

You have always been responsive. You have been frank with all of us. If you think our ideas have merit, you say so. If you think our ideas do not have merit, you say so in a very tactful way. And we are going to miss you, Mr. Chairman. And I just want to say that it has been a genuine honor and a genuine privilege to serve with you, Jay.

Thank you, and best wishes to you as you go back to the private sector and sort through what I am sure are your many opportunities there.

Mr. CLAYTON. Thank you, Senator Kennedy. Working with you and your staff has been tremendous, and in particular, I want to thank the Stanford victims for being willing to continue to engage with us to try and get them at least something back, and I—you are too nice to say it here, but we did not do a good job for them. But that will not happen again.

Senator KENNEDY. Godspeed, Jay.

Mr. CLAYTON. Thank you.

Senator BROWN. Thank you, Senator Kennedy.

Senator Cortez Masto.

Senator CORTEZ MASTO. Thank you, Ranking Member Brown. I too, Chairman Clayton, want to thank you for your service. It is not an easy task under the current environment. We have not always agreed on policy, but I too so appreciate your service to the country.

Let me ask a question. I know you are leaving at the end of this year. We are going to have a change in the Administration with new President-elect Biden. What is it that you are preparing for right now with that transition? Are you undertaking any type of work with the transition team or coordinating with them in any way whatsoever? And if you are, can you talk specifics?

Mr. CLAYTON. So in terms of transition to a new Chair and the like, let me just say this: I will be available. My predecessor was available to me. In terms of the ongoing work of the Commission, we are very transparent. We have four other Commissioners. We have an agenda that is transparent. And when the time comes in terms of legal restrictions and ability to engage with folks, we will do so.

Senator CORTEZ MASTO. Thank you. Thank you for that response. Clearly it sounds like no transition is happening until you get through the legal restrictions set by this current Administration.

Let me ask you about 13(f), the proposed rule that has been very controversial. Is the SEC planning to finalize this rulemaking prior to your leaving by the end of the year?

Mr. CLAYTON. The short answer to that is no, but if I can elaborate, this proposal has taught us something. The proposal goes to 13(f), which was there for a market integrity point of view. Let us find out how much institutional investors have in particular stocks and how that changes from quarter to quarter and whether there is market integrity. It is an outdated way to do that. We looked to modernize the threshold, but what we found was people were using 13(f) for two things it was not intended for. One was so that companies could find their shareholders. It is an incredibly inefficient way for that to happen, so we need to fix our proxy system, our OBO, NOBO—those are fancy terms for got to go through intermediaries—system to make it easier for companies to access their shareholders.

Then the other thing people are using it for is to track people's trading strategies, so you have XYZ fund manager, someone looks at their 13(f) reports, and tracks their trading strategies. Two things. I am not sure that we want regulation that is there to facilitate trading strategy tracking. That is proprietary. Maybe we do, maybe we do not. That certainly was not the intent. But if we do, 13(f) is a pretty inefficient way to do it. It is there. It has only long positions. I can go into all the technical things, but investors should understand if they are looking at 13(f) as a robust indication of trading strategies, in many cases it is not.

Senator CORTEZ MASTO. Chairman Clayton, let me jump to another issue that is a concern of mine as well. I understand Senator Scott talked to you about this, and I have a Rules Committees going on as well, so I have been trying to attend both of them. It is the investor protection for unsophisticated investors, and it goes to the issue of too many young people being able to trade online in this kind of environment where it is trading on platforms, no fee, really kind of gamifies the stock market into a playful environment. We have seen horrific, horrific coverage of a young man, a college student who was trading on an online platform while home due to the pandemic, and then he received a text message from that platform that he understood to mean he had a negative cash balance of $730,000, and fearing financial ruin, I understand from the reporting that he was do distraught he committed suicide.

This is horrific, and this is an area where we need to understand what is happening with these platforms, and really young adults, who are not sophisticated enough really to be on these platforms and thinking there is some sort of a gainful environment going on.

So my question to you is: What has the SEC done to avoid such financial devastation for investors? And what are you doing to respond to some of these platforms that are no-fee online that kind of incentivize that gamified kind of environment?

Mr. CLAYTON. Yes, let me say this: We have long allowed direct access for investors to what we call "self-directed accounts." It has been that way for a long time. But to the extent that what I would say is technology has facilitated that and then people home with the pandemic, and you have people what I would say is trading, not investing, that risks go up, and, in particular, when they are options or other complex products. And one specific thing we have done recently is we have put out guidance, Commission guidance, and are looking at other ways to do this, to tell people, not only broker-dealers but investor advisers but those platforms, you need to make sure your people who are trading those instruments have the capability to understand those instruments.

So long and short, you should not be playing around in leveraged investments and options where you can lose your shirt unless you can clearly understand them.

Senator CORTEZ MASTO. Well, clearly, there needs to be more education around this and really more involvement from the platforms and responsibility for young adults. So I think more needs to be done definitely.

Thank you again. I know my time is up. I appreciate your service.

Mr. CLAYTON. Thank you.

Senator BROWN. Thank you, Senator Cortez Masto.

I still see Senator Crapo on the floor awaiting the second vote to start. The next people in line are Senator Moran. Is he here by chance? Or Senator Jones? Or Senator Smith?

[No response.]

Senator BROWN. I will ask, is anybody here who wants to ask a question?

[No response.]

Senator BROWN. I do not know quite what to do.

Mr. CLAYTON. Do you want to ask a question?

Senator BROWN. Greg, if you would respond somehow to me whether I should wrap the hearing up or Senator Crapo would like to return? I assume there may be a couple of Members—well, let us do this, Chair Clayton. Anybody that did not get to ask because of the votes will send you questions in writing as we always do.

Senator BROWN. Thank you for always being responsive with that. You have been a good public official and public servant that way.

Then probably we should wrap the hearing up, and I will just close it out. I just had one short statement I wanted to make that, of course, I cannot find now. I guess I will not be able to find it. Give me about 30 seconds.

Let me just close with a statement, and then we will wrap this hearing up, Chair Clayton, and I am sorry it is just you and me here, but these things sometimes happen.

As I said in my opening statement, your agenda in my view has limited transparency and hurt investor protection. The increase of the shareholder proposal thresholds will result in less shareholder engagement and management accountability. The new requirements on proxy investors will raise costs for institutional investors and make proxy voting harder. Regulation Best Interest that we talked about earlier in my earlier comments and statement does not put Main Street customers first. The proposal that enables unregistered finders to act without oversight hurts investor protection. Your proposal to shut down transparency reports for 90 percent of institutional investors would leave companies and investors in the dark and eliminating financial disclosures, while ignoring calls for climate risk in response to a couple questions you got that that was brought out, too, ignoring calls for climate risk disclosure ignores what investors have been asking for.

It is quite a run. I know you and others will argue that less is more and that all these rollbacks are improvements. But to me, it is more likely that less is, well, just less.

Thank you, Mr. Chairman. Thanks for coming in front of our Committee many times. Good luck as you pursue your interests in the private sector, and this Committee is adjourned. Thank you.

Mr. CLAYTON. Take care.

Senator BROWN. All right. You, too. Thanks.

[Whereupon, at 11:41 a.m., the hearing was adjourned.]

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

PREPARED STATEMENT OF CHAIRMAN MIKE CRAPO

Today we will receive testimony from Securities and Exchange Commission Chairman Jay Clayton regarding the work and agenda of the SEC.

I thank you for your appearance before the Committee today, which is essential to our oversight of the SEC. Chairman Clayton, welcome.

You last appeared before this Committee in December of last year.

The COVID–19 pandemic hit the United States shortly after that hearing, and the SEC has taken many important steps to help limit the economic shock to our markets as Governments have attempted to confront such an unprecedented event.

The SEC used tools, such as the marketwide circuit breakers, for the first time since their adoption, when markets dropped 7 percent from the previous day's closing price of the S&P 500 Index.

There were a number of uses of "limit down" circuit breaks when overnight stock futures hit their 5 percent limit, which resulted in halting of all further downward trades.

Despite the high levels of volatility, it is my understanding that the current mechanisms in place served their intended purposes of increasing market stability.

Additionally, in order to comply with CDC guidance, you oversaw an unprecedented temporary closure of physical trading floors. This business continuity measure supported orderly trading, while ensuring the health and safety of market participants.

The SEC has continuously pursued enforcement actions, including a number of actions against those seeking to take advantage of investors during this vulnerable time.

Remarkably, all of this has been done while the SEC staff is working remotely.

It is commendable that despite the COVID–19 disruptions, you have continued to advance the items on your regulatory agenda which are the result of many months, and sometimes years, of diligent staff work.

The SEC finalized amendments to update and improve the definitions of "accredited investor" and "qualified institutional buyer," which will now take into consideration education and expertise, ultimately increasing investor participation in private offerings and expanding access to capital markets.

The SEC recently modernized the exempt offering framework, which will be a lifeline to small and medium-sized companies navigating the previously complex system.

These clear and concise rules will allow smaller companies to focus on getting their businesses back on track while improving the consistency of investor protections.

Commissioner Roisman engaged investors and market participants in crafting modernized shareholder proposal thresholds and proxy voting rules.

These modernizations no longer permit a small number of individuals with limited stakes to consume corporate boardrooms and will allow companies to better focus their efforts on COVID–19 recovery.

The SEC improved the readability and streamlined the information collected for Regulation S–K disclosures. It had been more than 30 years since these disclosures had been reviewed.

Last year, the SEC finalized a package of rulemakings including Regulation Best Interest, Form CRS Relationship Summary and two interpretations under the Advisers Act.

Compliance with these rules began on June 30, 2020. Since June, the SEC has been reviewing firms' compliance efforts and identifying additional areas for compliance improvements through a staff roundtable and other stakeholder engagement.

Another modernization effort underway at the SEC is the creation of the Strategic Hub for Innovation and Financial Technology. This important initiative is critical in the interagency coordination and dissemination of information to the public regarding initial coin offerings and other cryptocurrency matters.

Clearly, the SEC has been busy, and I commend you for balancing emergency COVID–19 responses while advancing critical rulemaking initiatives, risk-based inspections, enforcement actions, and issuer and fund filings.

I look forward to continuing to work with the SEC to ensure that the U.S. markets come back from the COVID–19 disruptions stronger, more liquid, and more dynamic than ever.

In closing, I also thank Chairman Clayton for his service and wish him the best of luck in his future endeavors as he departs the Commission in the coming weeks.

The will and drive you brought to this job allowed you to bring about many significant improvements that were long overdue.

I wish you the best of luck in your future endeavors and again, thank you for your service.

PREPARED STATEMENT OF SENATOR SHERROD BROWN

Thank you Chairman Crapo, and welcome Chair Clayton. Thank you for your service.

In this election, voters rejected this Administration and its Wall Street first attitude. Across the country, it is clear that people want financial watchdogs who look out for them, not make life easier for CEOs. It's time to turn the page on this failed Administration, and work together to build an economy that actually works for everyone.

That means an economy where all workers can save and invest their hard-earned money for a downpayment, and to help their kids go to college or community college, and to retire with dignity. That's how we grow the middle class—and it's time that everyone had the chance to join it.

That means finally working in a real way to eliminate the racial wealth gap. And it means we have to enlist everyone in our Government in that project, including the SEC.

This year the dedicated public servants at the Commission have done important work in the middle of a public health crisis and an economic crisis, monitoring for fraud and misconduct related to the pandemic while continuing their work to protect investors, maintain orderly markets, and promote capital formation.

Those efforts help working families saving and investing today, and build confidence in our markets for the future.

But I believe we can aim higher than simply making sure markets are stable. We can do better than just preventing crashes and outright fraud—we need to make markets actually work for working people.

Over the years, I have raised many concerns about how your leadership has left behind the people whose savings are stake in our markets—denying them the ability to hold executives accountable and withholding critical information about how companies are run and how they affect the environment and their communities.

You've tried to reduce transparency and undermine the protections we do have—even in the face of strong opposition from large and small investors, advocates, and experts.

From employees across the country scrimping and saving in their retirement accounts, to pension managers investing for a generation of workers, they are all in a worse place since you've been in office. That doesn't even include those who want to save for their family and retirement, but just can't because their paycheck isn't enough.

You pushed for what you call "Regulation Best Interest," a new standard that applies when brokers give advice to clients, but it doesn't put mom and pop customers first. A few weeks ago, you discussed the SEC's initial reviews after the standard went into effect in June.

Even though you said firms are making "good faith efforts," your staff reported shortcomings in compliance and failures to fully disclose disciplinary history to clients. In fact, it doesn't seem like you have any way to tell if this rule will help at all. Not a very auspicious beginning.

The SEC's final rules on proxy advisors and shareholder proposals are also clear examples of the Administration taking the side of corporate interests over Americans saving and investing for their future.

Over the years, shareholder engagement has forced important conversations to happen in boardrooms across America. We need to push companies to focus on improving diversity, implementing better governance, and addressing climate change risks. Yet your agenda has attempted to stifle these important conversations.

And I'm not the only one who's worried about your agenda. Last week, the North American Securities Administrators Association wrote you because 30 of its members—State watchdogs, including from Ohio—are concerned about a recent, broad rule proposal with few safeguards that in their words, "would facilitate unlicensed intermediaries in the private market".

That's a polite way of saying they are afraid of rampant fraud.

Not only are they worried that you're putting their constituents at risk, they are upset that they didn't even get a heads-up.

While you were advancing one bad rule after another, you didn't take the opportunity to make sure public companies disclose the risks climate change poses to their businesses. You did the opposite, watering down corporate financial disclosures.

And when you tried to improve corporate workforce disclosure—it still fell short, failing to address basic concepts like employee turnover or to identify the numbers of full-time workers compared to part time.

We are never going to be able to undo the corporate business model that treats workers expendable, if we can't even get companies to put out accurate information on the workers who make their businesses successful.

While the pandemic posed challenges for the Commission's enforcement work, it also revealed how applying additional resources to the whistleblower program delivers results. By reallocating staff to review whistleblower tips, you managed record results. I hope that my concerns about the uncertainty created by your recent changes to the rules don't undermine the obvious success of the program.

More broadly on enforcement, although the SEC has aggressively pursued COVID-related scams and frauds, the last year of enforcement shows more of the same—a few big cases create a big topline number, but looking under the hood, you see too many cases without individual accountability.

Last week's announcement that the SEC charged Wells Fargo's former CEO and consumer bank head for deceiving investors as part of the fake account scandal that was uncovered in 2016 is a rare and long overdue case where your agency has actually held someone accountable for breaking the law and ripping people off at a big bank or corporation.

Back when you were a nominee, you assured us that "individual accountability drives behavior more than corporate accountability." Well, you don't get better behavior by taking years to hold top executives individually accountable for intentional deception.

American voters sent a clear message in this election: they're tired of an economy where big corporations and their wealthy CEOs play by a different set of rules than people who work for a living.

With each rollback of important safeguards or disenfranchisement of shareholders, you claimed to be reforming, modernizing, or updating the rules.

People are tired of that political spin. When you say "reform," what you mean is: Make things a little easier for the biggest corporations. When you say "modernize," what you mean is: Make it that much harder to actually hold powerful CEOs accountable. When you say "update," what you mean is: Further entrench the Wall Street business model that exploits workers.

Eighty million Americans rejected your agenda in this election, and I hope we can reverse it.

As you prepare to leave the Commission, you have changed the rules so much, even you'll need to relearn fundamental elements of securities law when you return to private practice.

I've said it before—protecting workers' hard-earned savings should begin with a simple concept: putting their interests first.

I'm disappointed you don't see it that way, but a decisive majority of the country does.

Thank you, Mr. Chairman.

Testimony on "Oversight of the Securities and Exchange Commission"

Before the
U.S. Senate Committee on Banking, Housing, and Urban Affairs

Jay Clayton
Chairman, U.S. Securities and Exchange Commission

November 17, 2020

Chairman Crapo, Ranking Member Brown and Senators of the Committee, thank you for the opportunity to testify before you today about the work of the U.S. Securities and Exchange Commission (SEC or Commission or agency).[1] I am honored to discuss the great work of the women and men of the SEC over the past year in furtherance of our tripartite mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation.

Before I get to the substance of my testimony, I first want to address my recent confirmation that, consistent with my longstanding and previously disclosed expectations, I plan to conclude my tenure as SEC Chairman at the end of this year.[2] It has been the privilege of a lifetime to work alongside the women and men of the SEC. I am honored to call them colleagues and friends, and I could not be more proud of the work they have done each and every day on behalf of investors, especially this year in the face of many significant and unanticipated professional and personal challenges resulting from COVID-19 and other events.

I also want to acknowledge the support and assistance Congress has provided the SEC during my tenure. In many ways, Congress, and in particular, this Committee, serves as the SEC's board of directors, and I have appreciated the thoughtful and candid engagement over the past few years on issues of importance to investors, our markets and market participants.

Returning to the SEC's work, 2020 was certainly a year of challenge unlike any in recent memory. Fortunately, for America's investors and markets, the women and men of the SEC once again demonstrated their unwavering and unparalleled commitment to investors and our markets. Staff promptly responded to the effects of the economic shock of COVID-19 while simultaneously adapting their working conditions to meet health and safety needs and collective responsibilities. The staff's dedication, combined with our strong and nimble regulatory framework, allowed the SEC to respond quickly to the health, economic and other unexpected challenges we faced this year.

Through this period of collective, national challenges, the Commission has remained fully operational and committed to our mission. Our efforts are centered, first and foremost, on the health and safety of our employees and all Americans. With this in mind, we transitioned to

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[1] The views expressed in this testimony are those of the Chairman of the U.S. Securities and Exchange Commission and do not necessarily represent the views of the President, the full Commission or any Commissioner.
[2] *See* Press Release 2020-284, SEC Chairman Jay Clayton Confirms Plans to Conclude Tenure at Year End (Nov. 16, 2020), *available at* https://www.sec.gov/news/press-release/2020-284.

a full telework posture in our Washington, DC headquarters and across our 11 regional offices in early March 2020, and the agency remains in this posture to date with limited, mission-critical exceptions. The continued orderly operation of our securities markets during the COVID-19 pandemic is yet another testament to the professionalism of the 4,500 dedicated women and men across the SEC, who have risen to the occasion and remain committed to protecting our Main Street investors and the integrity of our markets.

In the remainder of my testimony, I will summarize some of the SEC's efforts over the past year, including: (1) the SEC's response to COVID-19; (2) diversity, inclusion and opportunity; (3) 2020 regulatory and policy initiatives; (4) enforcement, compliance and investor education; and (5) moving forward.

SEC Response to COVID-19

Market Function, Market Monitoring and Regulatory Coordination

COVID-19 has had profound effects on our capital markets and our broader economy. At the outset, policymakers responded to the most apparent and acute economic and market consequences with unprecedented monetary and fiscal policy actions. I commend Congress and our regulatory colleagues, including the Federal Reserve and the Treasury Department, for their swift, resolute responses to our nation's economic challenges.

Fair and orderly market function is essential to investor protection, and the continued orderly operation of our short-term funding markets and other capital markets has been and will continue to be an essential factor driving an effective national health and safety response to COVID-19. Despite the extraordinary trading volumes and volatility we saw in our securities markets earlier this year,[3] at a high level, the "pipes and plumbing" of our securities markets have functioned largely as designed, and importantly, as market participants would expect, and during these times of unprecedented stress, we have observed no systemically adverse operational issues with respect to our key market infrastructure. We recognize that functional risks, including system and cybersecurity risks are ever present, and our staff are currently reviewing and will continue to review market function and whether additional improvements should be considered.

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[3] For example, from the equities perspective, the ten highest days by notional volume or trade count—*of all time*—occurred in 2020. In 2019, the average daily volume was 7.0 billion shares per day; on the last day of February 2020, we observed the second most shares traded ever, 19.3 billion shares. Equities volatility has also been high. For example, the "VIX" Index provides an options market-based measure of expected future volatility. At the beginning of January 2020, the VIX value was 12.5. On March 16, it reached an all-time high of 82.7. The volume and volatility story is similar in the corporate and municipal bonds markets, where the average number of daily municipal bond transactions in mid-February was approximately 34,000 and increased to 50,000 transactions per day in March, reaching 75,000 per day on March 23. *See* Remarks to the Financial Stability Oversight Council (May 14, 2020), *available* at https://www.sec.gov/news/speech/clayton-remarks-financial-stability-oversight-council-051420#_ftn6. (SEC staff prepared the various statistics cited based on data from various sources, including the World Bank, Bloomberg, Financial Industry Regulatory Authority, Municipal Securities Rulemaking Board and the SEC's Market Information Data Analytics System).

Staff across the SEC has been continuously monitoring our capital markets, including with respect to prices and price movements, capital flows and credit availability. Coordination has been central to these and other efforts. In April 2020, building on the Commission's ongoing market monitoring and response work, the SEC formed an internal, interdisciplinary COVID-19 Market Monitoring Group to function as a focal point for managing and coordinating our efforts to both monitor and respond to the effects of COVID-19 on markets, issuers and investors and assist other regulators and policymakers.[4] This group also spearheaded two important market analysis initiatives: (1) to identify, analyze and clarify interconnections across key segments of our financial markets with increased specificity (the "Interconnectedness Initiative"), and (2) to analyze the potential risks and downstream effects of investment strategies and mandates that include or are subject to mechanistic rules, guidelines or restrictions on holdings of assets (e.g., by reference to ratings and downgrades) (the "Initiative on the Effects of Mechanistic Portfolio Management Guidelines/Restrictions").

As the culmination of the Interconnectedness Initiative, SEC staff recently published a report, *U.S. Credit Markets: Interconnectedness and the Effects of the COVID-19 Economic Shock*, examining the structure and function of the $54 trillion U.S. credit markets.[5] These interconnections can both facilitate risk absorption and accelerate risk transmission and amplify risks in times of stress. The primary purpose of the report is to identify key structural and flow-related interdependencies in the U.S. credit markets, as well as areas of stress caused by the COVID-19 shock, with an eye toward informing policymakers as we seek to improve the functioning and resilience of our financial markets.

This report found that the U.S. credit markets—in size, structure and function—have changed significantly since the 2008 financial crisis, and the broad stress in the short-term funding markets caused by the COVID-19 shock demonstrated that the ability and willingness of intermediaries (e.g., "market makers") to absorb significant, rapid shifts in investor sentiment (e.g., a "dash for cash") is limited in absolute terms and may become more limited as spreads widen and volatility increases during periods of stress and uncertainty. Due to the interconnected nature of our credit markets and the size and scope of the COVID-19 shock, the multifaceted and immediate actions of the Federal Reserve, Treasury and Congress through the CARES Act were instrumental in ameliorating stress in the credit markets, particularly the short-term funding markets. The combination of the Federal Reserve's intervention and the CARES Act also was extremely important in stabilizing prices (e.g., housing prices) and sustaining economic activity (e.g., consumer spending), which in turn added stability to the credit markets. Finally, while the general economic and credit stresses from the initial and ongoing effects of the COVID-19 shock are still unfolding, we must continue monitoring key market segments, including corporate debt, municipal securities and commercial real estate—both individually and as interconnected components of our financial system.

Following the release of the report, the SEC held a roundtable to discuss the report, which brought together an impressive group of market participants and domestic and

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[4] *See* Press Release 2020-95, SEC Forms Cross-Divisional COVID-19 Market Monitoring Group (Apr. 24, 2020), *available at* https://www.sec.gov/news/press-release/2020-95.

[5] *See* Press Release 2020-245, SEC Staff Releases Report on U.S. Credit Market Interconnectedness and the Effects of the COVID-19 Economic Shock (Oct. 5, 2020), *available at* https://www.sec.gov/news/press-release/2020-245-0.

international regulators.[6] I expect our efforts in this area will continue to facilitate informed engagement on systemic risk and financial sector vulnerabilities domestically and internationally.

The Initiative on the Effects of Mechanistic Portfolio Management Guidelines/ Restrictions complements the staff's work on the Interconnectedness Initiative. Staff has been exploring whether credit assessments and credit rating agency downgrades—and market anticipation of, and responses to, those ratings actions—may (1) contribute to negative procyclicality in certain circumstances and (2) have implications for financial stability. Together these projects are informing the Commission's assessment of the risks facing our markets.

Close engagement between the SEC and our domestic and international regulatory counterparts and other authorities helped us identify areas of stress and vulnerability and potential mitigating actions. The dedication, cooperation and engagement with these partners has benefited our work at the SEC, including helping to ensure that trading, settlement, capital formation and the provision of credit continues to be as orderly, efficient and fair as practicable under the circumstances.[7] This domestic and international engagement, including discussions concerning the innumerable linkages, interconnections and continually evolving dynamics between global banking, housing finance, commodities and other markets and our capital markets has helped us identify areas of stress and vulnerability and potential mitigating actions.

Domestically, we have been engaged in regular—often daily—communication, coordination and information sharing with our fellow regulators and other authorities concerning risks and impacts resulting from COVID-19 on investors, companies, state and local governments and other issuers, and the financial system as a whole, including cybersecurity risks.[8] These efforts have occurred on both a bilateral and multilateral basis, including through participation in bodies such as the Financial Stability Oversight Council (FSOC) and the President's Working Group on Financial Markets (PWG), as well as ad-hoc multi-agency efforts. Internationally, we have worked closely on capital markets-related matters arising from COVID-19 with our foreign counterparts and international prudential banking authorities on a bilateral and multilateral basis. We have also played an active role in the response efforts of various international multilateral organizations, including by assisting with the development of and contributing to work streams organized by the Financial Stability Board (FSB) and International Organization of Securities Commissions (IOSCO).[9] The FSB is completing a review of market

[6] *See* Roundtable on Interconnectedness and Risk in U.S. Credit Markets (Oct. 14, 2020), *available at* https://www.sec.gov/news/upcoming-events/roundtable-interconnectedness-and-risk.

[7] For example, we have frequently sought and received guidance and assistance from our domestic regulatory partners, from which our efforts to facilitate market function and protect investors have benefitted immeasurably. We have also provided our expertise and perspectives on various responses to market developments, including, for example, capital markets advice concerning the design, establishment and potential impacts of funding, credit, liquidity and loan facilities.

[8] This includes engagement with various personnel from the Treasury Department, National Economic Council (NEC), Federal Reserve Board, Federal Reserve Bank of New York, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Commodity Futures Trading Commission (CFTC) and Federal Housing Finance Agency (FHFA), among others.

[9] We have contributed, for instance, to multiple COVID-19 initiatives coordinated by the FSB's Standing Committee on Assessment of Vulnerabilities (SCAV) and Standing Committee on Supervisory and Regulatory Cooperation, as well as IOSCO's Financial Stability Engagement Group.

stress arising from the COVID-19 shock, and the SEC has substantially contributed to this analysis.

COVID-19 Related Guidance and Targeted Regulatory Assistance and Relief

The Commission and staff have worked to promptly provide guidance and targeted regulatory assistance and relief, where necessary or appropriate, to assist market participants in their efforts to continue business operations, including investor service operations, in the face of various challenges caused by COVID-19. Many of our early actions focused on operational issues, including facilitating the shift to business continuity plans that are consistent with health and safety directives and guidance. Other actions have involved targeted, conditional and temporary relief relating to filing and delivery deadlines that could be significantly affected by COVID-19, guidance to promote continued shareholder engagement and strong corporate governance—including by facilitating virtual annual shareholder meetings and virtual board meetings—for companies and funds and guidance for market participants regarding how to address operational challenges resulting from COVID-19.[10]

The Commission has also provided targeted relief to facilitate small business access to capital during these uncertain economic times. For example, recognizing the important role of business development companies (BDCs) in capital formation, particularly in small and middle-market lending, the Commission provided temporary relief to assist BDCs in their ongoing operations and in making additional investments in small and medium-sized businesses affected by COVID-19.[11] Additionally, based on feedback from the Small Business Capital Formation Advisory Committee, the Commission provided temporary, targeted and conditional relief to allow established small businesses access to urgently needed capital in a timely and cost-effective manner through Regulation Crowdfunding, while continuing to provide appropriate protections for investors.[12]

A fundamental principle for the SEC and our capital markets has always been the importance of issuers providing investors with financial and operational disclosures that are clear, high-quality and timely—and today that principle is as important as ever. Staff has been monitoring and providing guidance with respect to corporate and municipal filings and disclosures of U.S. issuers, as well as foreign companies listed in the United States. Additionally, we have been reminding issuers and others to continue to evaluate their obligations

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[10] For an overview of selected SEC response efforts to COVID-19, including guidance and regulatory assistance and relief, please see the SEC's "Coronavirus (COVID-19) Response" webpage at https://www.sec.gov/sec-coronavirus-covid-19-response. *See also* An Update on the Commission's Targeted Regulatory Relief to Assist Market Participants Affected by COVID-19 and Ensure the Orderly Function of our Markets (June 26, 2020), *available at* https://www.sec.gov/news/public-statement/update-commissions-targeted-regulatory-relief-assist-market-participants.

[11] *See* Press Release 2020-84, SEC Provides Temporary, Conditional Relief for Business Development Companies Making Investments in Small and Medium-sized Businesses, *available at* https://www.sec.gov/news/press-release/2020-84.

[12] *See* Press Release 2020-101, SEC Provides Temporary, Conditional Relief to Allow Small Businesses to Pursue Expedited Crowdfunding Offerings (May 4, 2020), *available at* https://www.sec.gov/news/press-release/2020-101. This relief was recently extended for an additional 18 months. *See also* Press Release 2020-273, SEC Harmonizes and Improves "Patchwork" Exempt Offering Framework (Nov. 2, 2020), *available at* https://www.sec.gov/news/press-release/2020-273.

to make materially accurate and complete disclosures in accordance with the federal securities laws.

In March and early April, I, along with the Directors of the Division of Corporation Finance and Office of Municipal Securities, issued public statements discussing the importance of corporate and municipal disclosures and urging issuers to provide investors with as much information as practicable regarding their current financial and operating status given the pandemic, as well as forward-looking information about their future operational and financial planning.[13] In a similar statement, the SEC's Chief Accountant reminded issuers of the continued importance of high-quality financial reporting for investors in light of COVID-19.[14]

Investor Protection, Education and Outreach

The SEC's Office of Compliance Inspections and Examinations (OCIE) and Division of Enforcement (Enforcement) expanded their continuous investor protection work to incorporate the unique compliance challenges and the unfortunately inevitable frauds and illicit schemes generated by COVID-19. OCIE shifted to conducting off-site examinations through correspondence, supplementing that work with on-site activity as circumstances required. While maintaining its commitment to proactive oversight, OCIE also worked with entities to address the timing of document requests, availability of personnel for interviews, and other matters to be appropriately responsive to operational constraints while continuing to focus on investor protection.

OCIE also engaged in regulatory outreach with hundreds of firms in March and April 2020 to assess the pandemic's impact on market and liquidity risks as well as firms' risk exposure to certain industries, counterparties and asset classes. OCIE also sought to better understand operational risks associated with resiliency, business continuity, cyber and information security and regulatory obligations, with a particular focus on investor protection and market integrity. OCIE distilled and shared this feedback from firms throughout the agency, with other domestic and foreign financial regulatory authorities and with self-regulatory organizations (SROs) to facilitate the provision of additional guidance and regulatory relief as necessary or appropriate.

Enforcement similarly demonstrated its nimble nature in its response to the effects of COVID-19 by dedicating significant resources to COVID-related matters. Starting in February 2020, the Commission began suspending trading where immediate action was necessary in light of questions regarding the accuracy and adequacy of information in the marketplace. The Commission suspended trading in 36 issuers, with 24 of those in March and April alone, and followed with six enforcement actions against issuers and individuals alleging fraud based on

[13] *See* Statement on The Importance of Disclosure – For Investors, Markets and Our Fight Against COVID-19 (Apr. 8, 2020), *available at* https://www.sec.gov/news/public-statement/statement-clayton-hinman; Statement on The Importance of Disclosure for our Municipal Markets (May 4, 2020), *available at* https://www.sec.gov/news/public-statement/statement-clayton-olsen-2020-05-04.

[14] *See* Statement on Statement on the Continued Importance of High-Quality Financial Reporting for Investors in Light of COVID-19 (June 23, 2020), *available at* https://www.sec.gov/news/public-statement/teotia-financial-reporting-covid-19-2020-06-23.

COVID-19 related claims. Enforcement has also opened over 150 COVID-related investigations and inquiries.

Additionally, Enforcement also released a statement early on in the pandemic reminding market participants of the importance of maintaining market integrity and following corporate controls and procedures, especially during times of market volatility.[15] Good corporate hygiene cannot be overstated, nor can the importance of related controls designed to prevent not only insider trading, but also the appearance of impropriety or misalignment of interests. Following this theme, in September, in a letter to the House Financial Services Committee, I provided a series of specific suggestions regarding corporate hygiene, including the use of Rule 10b5-1 plans, that I believe companies should follow and that could be the basis of legislation or future rulemaking.[16]

The SEC—led by the Office of Investor Education and Advocacy (OIEA)—has continued its important education and outreach to investors and market participants about COVID-19 related scams. OIEA, along with Enforcement's Retail Strategy Task Force, has issued investor alerts to inform and educate investors about concerns related to recent market volatility and COVID-19-related schemes,[17] as well as an alert warning investors of bad actors using CARES Act benefits to promote high-risk, high fee investments and other inappropriate products and strategies.[18] OIEA and the SEC's 11 regional offices have also continued targeted outreach events to retail investors, including to seniors, service members and other potentially vulnerable populations.[19] Two of the Commission's advisory committees, the Investor Advisory Committee and the Small Business Capital Formation Advisory Committee, convened special meetings—held virtually and broadcast live to the public—which provided the Commission with insight into the operational, health and safety and other challenges faced public companies and small businesses, as well as individual and institutional investors, during this time.

Diversity, Inclusion and Opportunity

The importance of diversity, inclusion and opportunity to the Commission, the financial industry and our society more generally was brought into stark relief by the events of 2020. The Commission's commitment to these fundamental and performance-enhancing principles is long-standing, and from the beginning of my tenure as Chairman, the SEC has undertaken a variety of internal initiatives to further our collective commitment to these principles and each other, including efforts to measure our progress. We also launched a variety of external initiatives

[15] *See* Statement from Stephanie Avakian and Steven Peikin, Co-Directors of the SEC's Division of Enforcement, Regarding Market Integrity (Mar. 23, 2020), *available at* https://www.sec.gov/news/public-statement/statement-enforcement-co-directors-market-integrity.
[16] *See* https://www.sec.gov/files/clayton-letter-to-chairman-sherman-20200914.pdf.
[17] *See* Frauds Targeting Main Street Investors—Investor Alert (Apr. 10, 2020), *available at* https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_frauds; Look Out for Coronavirus-Related Investment Scams—Investor Alert (Feb. 4, 2020), *available at* https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_coronavirus (both updated June 17, 2020).
[18] *See* COVID-19 Related Early Withdrawals from Retirement Accounts—Be Careful of Fraudsters and other Bad Actors Targeting Your Retirement Savings (June 3, 2020), *available at* https://www.sec.gov/oiea/investor-alerts-and-bulletins/covid-19-related-early-withdrawals-retirement-accounts-be.
[19] See Press Release 2020-129, New York Regional Office to Host Education Call for Investors on Avoiding COVID-Related Fraud (June 11, 2020), *available at* https://www.sec.gov/news/press-release/2020-129.

designed to promote these principles in our markets, including in the areas of investor access and investment management.

In March 2020, the agency released its first ever Diversity and Inclusion Strategic Plan (D&I Strategic Plan), the development of which was led by the Office of Minority and Women Inclusion (OMWI) and involved extensive engagement with SEC staff at all levels from divisions and offices throughout the agency and the SEC's Diversity Council and Employee Affinity Groups.[20] The D&I Strategic Plan provides a framework to: (1) guide the agency's efforts to promote diversity, inclusion and opportunity in the SEC's workforce; (2) increase opportunities for minority- and women-owned businesses to contract with the agency; and (3) develop standards for assessing the diversity policies and practices of firms regulated by the SEC. Agency leaders and managers will continue to implement the initiatives outlined in the D&I Strategic Plan with a focus on weaving diversity, inclusion and opportunity into their work advancing the SEC's mission.

Among the actions taken in this year in support of the D&I Strategic Plan's goals were: (1) releasing two upgraded dashboards on diversity in our workforce; (2) initiating the Un-Covering Task Force to promote inclusion in our workplace; (3) launching manager training on conscious equity; and (4) increasing senior-level engagement with diverse professional organizations. The SEC has also taken steps to promote fairness in the appointment process for members of its independent advisory committees through formal, staff-led nominating committees, whose efforts are led by the SEC's Senior Policy Advisor on Diversity and Inclusion.[21]

Regulatory and Policy Agenda

During my time as Chairman, the agency, recognizing the value of our time-tested regulatory framework, has focused on modernizing the rules and regulations that implement that framework, some of which have not been meaningfully updated in decades. We have also taken advantage of advances in communication and other technology to improve our engagement with market participants as well as the methods and practices we employ to fulfill our regulatory responsibilities. These actions were necessary, as our markets have undergone a sweeping transformation over the past few decades and many of our rules, regulations and other requirements had, understandably, become dated. More importantly, our modernization efforts have improved all three components of our mission, as these efforts have been shaped by our dedicated staff and their decades of experience and commitment to our mission. Many of these efforts involve collaboration across multiple divisions and offices, with support provided by the SEC's Division of Economic and Risk Analysis (DERA), the Office of the General Counsel and the Office of the Secretary.

As I have previously testified, since becoming Chairman, I have constructed the SEC's Regulatory Flexibility Act Agenda to enhance transparency and accountability to the public and Congress by outlining: (1) what initiatives the agency could reasonably expect to complete over

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[20] *See* https://www.sec.gov/file/diversity-and-inclusion-strategic-plan-2020.

[21] *See* Press Release 2020-173, SEC Provides Transparency to the Process of Nominating Candidates to the Investor Advisory Committee (Aug. 5, 2020), *available at* https://www.sec.gov/news/press-release/2020-173.

the next 12 months, and (2) of those initiatives, which ones would have the most positive impact on our Main Street investors and our markets. As of the date of this testimony, I expect the Commission will have advanced 40 of the 48 rules in the near-term 2019 agenda, or 83 percent of the items, while also prioritizing emergency COVID-19 relief and initiatives.[22] Below I will highlight some of the Commission's key policy efforts over the past year.

Improving the Proxy Process

Consistent with the Commission's modernization efforts, modernizing and enhancing the effectiveness, efficacy and efficiency of the proxy process for the benefit of all shareholders has been an important priority. The proxy system is the primary means through which most public company shareholders cast their votes and express their views to companies and other shareholders on matters of collective importance. This year, the Commission significantly progressed its fulsome review of the shareholder proposal and proxy voting process, some components of which had not been updated since 1954.

Proxy voting advice businesses have come to play a significant role in the proxy voting process and are uniquely situated to influence investors' voting decisions and, as a result, the proxy voting process more generally. In July 2020, the Commission adopted amendments to its rules governing proxy solicitations designed to ensure that clients of proxy voting advice businesses have reasonable and timely access to more transparent, accurate and complete information on which to make voting decisions.[23] The amendments aim to facilitate the ability of those who use proxy voting advice—investors, fund managers and others who vote on investors' behalf—to make informed voting decisions without imposing undue costs or delays that could adversely affect the timely provision of proxy voting advice and the operation of the proxy process more generally. The principle that more complete and robust information and discussion leads to more informed investor decision-making, and therefore results in choices more closely aligned with investors' interests, was a principal factor in the Commission's adoption of these amendments. Simultaneously, the Commission also supplemented its August 2019 guidance regarding the proxy voting responsibilities of investment advisers to assist them in assessing how to consider additional information from issuers that may be more readily available as a result of the proxy solicitation amendments.

In September 2020, the Commission adopted amendments to certain procedural requirements and the provisions relating to shareholder proposals—both initial submission and resubmission—in Rule 14a-8 to modernize and enhance the efficiency of the shareholder-proposal process for the benefit of all shareholders.[24] Recognizing and preserving the benefits of this form of engagement among shareholder-proponents, other shareholders, and companies, these amendments are intended to help ensure that a shareholder-proponent has demonstrated a meaningful economic stake or investment interest in a company before the shareholder may draw

[22] In 2018, the Commission timely advanced 23 of the 26 rules in the near-term agenda, or 88 percent, and in 2019, the Commission advanced 35 of the 39 rulemakings on the near-term agenda, or nearly 90 percent of the items.
[23] *See* Press Release 2020-161, SEC Adopts Rule Amendments to Provide Investors Using Proxy Voting Advice More Transparent, Accurate and Complete Information (July 22, 2020), *available at* https://www.sec.gov/news/press-release/2020-161.
[24] *See* Press Release 2020-220, SEC Adopts Amendments to Modernize Shareholder Proposal Rule (Sept. 23, 2020), *available at* https://www.sec.gov/news/press-release/2020-220.

on company and shareholder resources to require the inclusion of a proposal in the company's proxy statement. The amendments adopted by the Commission do not preclude smaller shareholders from participating in the shareholder proposal process. Specifically, under the transition period of the rules, any investor who is eligible to submit a proposal when the rules become effective—by having held at least $2,000 worth of company securities for one year—will continue to be able to submit a proposal without increasing the dollar amount of their holdings. All that will be required is that they continue to hold those securities.

Additionally, it is important to note that the SEC's regulation of shareholder proposals has not been, nor is it under the amendments adopted by the Commission, designed to judge the value of any particular shareholder proposal or intended to take a position on the merits of any shareholder proposal topic. Rather, the rule focuses on setting thresholds at which it is appropriate for a shareholder proposal—regardless of its substance—to be included in the company's proxy materials at the expense of the other shareholders (directly and indirectly as owners of the company), either as an initial submission or as a resubmission.

Our work to modernize and enhance the accuracy, transparency and effectiveness of our proxy voting continues, including efforts to address "proxy plumbing" and "universal proxy."

Facilitating Capital Formation in our Public Markets

Encouraging capital formation in our public markets—another priority during my tenure at the SEC—has the benefit of providing a broader and more attractive set of investment opportunities to Main Street investors, who benefit from public company stock prices that reflect not only publicly reported information but also the views of professional investors. It is my experience that companies that go through the SEC public registration and offering process often come out as better companies, providing meaningful benefits to the company, investors and our capital markets.

This past year, led by the Division of Corporation Finance, the SEC continued its efforts to increase the attractiveness of the public markets. Recognizing that one size does not fit all for the regulation of public companies, in March 2020, the Commission adopted amendments to more appropriately tailor the "accelerated filer" and "large accelerated filer" definitions.[25] Under these amendments, smaller reporting companies with less than $100 million in revenues would not be required to obtain an attestation of their internal control over financial reporting from an independent outside auditor. For many smaller companies that received a similar five-year exemption under the JOBS Act, these amendments would extend that exemption until the company exceeded $100 million in revenues. Many companies that will benefit from this are small, former emerging growth companies that lose such status after five years as a public company, even though they may still have revenues less than $100 million.

The Commission has also continued its efforts to simplify and update disclosure requirements to enhance the quality of information available to investors and reduce costs for

[25] *See* Press Release 2020-58, SEC Adopts Amendments to Reduce Unnecessary Burdens on Smaller Issuers by More Appropriately Tailoring the Accelerated and Large Accelerated Filer Definitions (Mar. 12, 2020), *available at* https://www.sec.gov/news/press-release/2020-58.

registrants.[26] For example, in August 2020, the Commission adopted amendments to Regulation S-K, modernizing our public company business disclosure rules for the first time in over 30 years.[27] Many of the amendments reflect the Commission's long-standing commitment to a principles-based, registrant-specific approach to disclosure, an approach that has proven extremely beneficial to investors and our markets over the past 80 years. With respect to human capital, the new rules require companies to incorporate the key human capital metrics that they focus on in managing the business, again to the extent material to an understanding of the company's business as a whole. I believe the principles-based approach adopted by the Commission will produce meaningful qualitative and quantitative disclosure, including, as appropriate, disclosure of metrics that companies actually use in managing their affairs, which, in turn, will facilitate meaningful engagement with investors on these matters.

I believe these measures—in addition to other actions the Commission has taken over the past few years—will substantially benefit our long-term Main Street investors, including by saving issuers significant time and expense, enhancing the quality of disclosure and increasing investor protection.

Small Business Capital Formation and Harmonization of the Exempt Offering Framework

In addition to efforts to help facilitate capital formation in the public markets, the Commission has also been focused on initiatives to facilitate access to capital for smaller issuers. Our private markets have become increasingly important and, in certain segments of our financial markets ecosystem, are now often seen as more attractive for companies and investors than our public markets, in terms of amounts of capital raised, investment opportunities and returns, among other metrics.

Here, it is very important to emphasize that it is not accurate to describe our financial market ecosystem as a "binary" public-private system, where companies and investors choose one or the other for capital raising and investing. For companies that have valuations below $100 million or even $500 million, depending on their industry and other factors, the public capital markets are often not a viable option. In other words, for the vast majority of America's companies, the public markets are not a viable option for their capital needs. Much of our modernization work in the private markets space focuses on these companies and, in particular, smaller companies that do not have the resources and scale to raise money in our public markets. For larger companies, our efforts to make the public markets more attractive is motivated by two primary principles. First, attractive public markets will lead to more public company investment options for all investors, including Main Street investors. Second, modernizing our rule set for

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[26] *See, e.g.*, Press Release 2020-205, SEC Modernizes Disclosures for Banking Registrants (Sept. 11, 2020), available at https://www.sec.gov/news/press-release/2020-205; Press Release 2020-118, SEC Adopts Amendments to Improve Financial Disclosures about Acquisitions and Dispositions of Businesses (May 21, 2020), available at https://www.sec.gov/news/press-release/2020-118; Press Release 2020-52, SEC Amends Rules to Improve Disclosure and Encourage Issuers to Conduct Debt Offerings on a Registered Basis (Mar. 2, 2020), available at https://www.sec.gov/news/press-release/2020-52.

[27] *See* Press Release 2020-192, SEC Adopts Rule Amendments to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K (Aug, 26, 2020), *available at* https://www.sec.gov/news/press-release/2020-192.

public companies will help ensure that capital raised under those rules is raised efficiently, with the savings available to issuers for productive use.

Of course, the primary focus of our modernization work is investors and ensuring that they have the ability to participate in both our public and private capital markets, incorporating the reality that growth capital is more focused in our private markets than it was 50 years ago. In that regard, over the past few decades, Congress and the SEC have taken a number of steps to expand Main Street investors' access to certain aspects of our private capital markets with appropriate protections—most notably in the JOBS Act and related rules. These various efforts have had benefits, but they also have added new "patches" to an already patchwork regulatory framework that until very recently was rooted in a three decades-old binary income and wealth test for individual investor access.

The Commission has taken significant steps in recent months to harmonize and improve the exempt offering framework. In August 2020, the Commission voted to amend the accredited investor definition.[28] These amendments are the product of years of effort by the Commission and its staff to consider and analyze approaches to revising the accredited investor definition, and for the first time, individuals will be permitted to participate in our private capital markets as accredited investors not only based on their income or net worth, but also based on established, clear measures of financial sophistication. It is my view that, speaking generally, this measure will improve the overall level of sophistication of our accredited investor pool, benefiting all members of that pool.

In addition, earlier this month, the Commission acted to improve the multilayer and overly complex exempt offering framework to reduce unnecessary costs, promote capital formation for smaller and medium-sized companies and expand investment opportunities while preserving and enhancing investor protections.[29] To be clear, and in line with my discussion of the multifaceted nature of our financial markets ecosystem above, these important enhancements in no way reflect an effort to favor—and in my view will not favor—our private markets over our public markets. To be more specific, for larger companies, I do not expect these amendments to move the needle in the decision of whether and, if so, when to go public. But, as discussed above, for many of America's smaller and medium-sized businesses, our exempt offering framework is the *only* viable channel for raising capital, and it is critical that we use technology and other tools available to us to make that framework as easy to navigate as possible while maintaining strong investor protections. The amendments, which benefited from substantial public engagement following a June 2019 concept release and March 2020 proposing release, address gaps and complexities in the exempt offering framework that may impede access to capital for issuers and access to investment opportunities for investors and reduce friction points in the offering framework for small and medium-sized companies that may not have the resources or sophistication to navigate complex rule sets. The clarity, cost reductions and efficiencies provided by these amendments will have the most benefit for smaller and medium-sized businesses—the lifeblood of our local economies—at a time when they need it most.

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[28] *See* Press Release 2020-191, SEC Modernizes the Accredited Investor Definition (Aug. 26, 2020), *available at* https://www.sec.gov/news/press-release/2020-191.

[29] *See* Press Release 2020-273, SEC Harmonizes and Improves "Patchwork" Exempt Offering Framework (Nov. 2, 2020), *available at* https://www.sec.gov/news/press-release/2020-273.

Additionally, in October 2020, the Commission proposed a new limited, conditional exemption from broker registration requirements for "finders" who assist issuers with raising capital in private markets from accredited investors.[30] There is costly and long-standing uncertainty in this area that we should resolve. The proposal provides a range of possible means to address this uncertainty. I am not wedded to any particular approach; however, I am wedded to reducing unnecessary and costly uncertainty in a tailored manner that addresses the capital formation needs of certain smaller issuers while preserving investor protections, particularly in areas of the country that have less developed private capital markets ecosystems.

I believe the Commission should continue to explore whether we can increase opportunities for Main Street investors in the private markets while maintaining strong and appropriate investor protections. To that end, staff is examining whether appropriately structured funds—where Main Street investors can invest side by side with professional institutional investors, as they do today in our public markets—can facilitate Main Street investor access to private investments. I firmly believe that Main Street investors should have the opportunity to construct retirement portfolios that mirror well-managed pension funds, with comparable costs and protections, including having the same terms as institutional investors. I believe it is possible to craft fund structures that will provide access to investment opportunities on substantially the same terms as those that are available to institutional investors and we should focus our access-oriented efforts on such fund structures. [31]

Modernizing Asset Management Regulation and Improving the Investor Experience

Modernizing Fund Disclosures. For the past several years, the Division of Investment Management (Investment Management) has been exploring the modernization of the design, delivery and content of fund disclosures and other information for the benefit of investors. These disclosures are especially important because millions of Main Street investors invest through mutual funds, exchange-traded funds (ETFs) and other types of investment companies.

In June 2018, the Commission issued a request for comment on how to improve fund disclosures for the benefit of Main Street investors.[32] Based on the feedback received from investors regarding the length and complexity of fund disclosures, in August 2020, the Commission proposed comprehensive modifications to the mutual fund and ETF disclosure framework to better serve the needs of retail investors.[33] The proposed disclosure framework

[30] *See* Press Release 2020-248, SEC Proposes Conditional Exemption for Finders Assisting Small Businesses with Capital Raising (Oct. 7, 2020), *available at* https://www.sec.gov/news/press-release/2020-248.
[31] For example, I believe the recent information letter issued by the Department of Labor concerning private equity investments as a component of a professionally managed asset allocation fund will provide our long-term Main Street investors with a choice of professionally managed funds that more closely match the diversified public and private market asset allocation strategies pursued by many well-managed pension funds as well as the benefit of selection and monitoring by ERISA fiduciaries. *See* News Release, U.S. Department of Labor Issues Information Letter on Private Equity Investment (June 3, 2020), *available at* https://www.dol.gov/newsroom/releases/ebsa/ebsa20200603-0.
[32] *See* Press Release 2018-103, SEC Modernizes the Delivery of Fund Reports and Seeks Public Feedback on Improving Fund Disclosure (June 5, 2018), *available at* https://www.sec.gov/news/press-release/2018-103.
[33] *See* Press Release 2020-172, SEC Proposes to Improve the Retail Investor Experience through Modernized Fund Shareholder Reports and Disclosures (Aug. 5, 2020), *available at* https://www.sec.gov/news/press-release/2020-172.

would feature concise and visually engaging shareholder reports that would highlight information that is particularly important for retail investors to assess and monitor their fund investments. By encouraging fund disclosures that use modern communication techniques to emphasize clearly and concisely the information investors find most useful, this proposal should facilitate better-informed decision making.

Related to the fund disclosure modernization initiative, in March 2020, the Commission also adopted a new rule and related amendments to simplify and streamline disclosures for investors about variable annuities and variable life insurance contracts.[34] These changes permit the use of concise, reader-friendly prospectuses designed to improve investors' understanding of the contracts' features, fees, and risks. The framework's use of layered disclosure and technology will help investors more easily access information needed to make an informed investment decision.

Modernizing the Asset Management Regulatory Framework. The Commission advanced a comprehensive overhaul of several dated regulatory frameworks in the asset management space this past year. Overall, these reforms reflect the ever-broadening product innovation and investor choice available in today's asset management industry, while also taking into account the risks associated with funds' increasingly complex portfolio composition and operations. For example, in October 2020, the Commission acted to enhance and modernize the regulatory framework for fund of funds arrangements, which will provide flexibility to fund managers to allocate and structure investments efficiently.[35]

The Commission also adopted a modernized, comprehensive approach to the regulation of funds' derivatives, which have come to play an important role for many funds in portfolio strategy and risk management, and where our regulation was uncertain and in certain cases inadequate.[36] This comprehensive approach to the various uses of derivatives, including to provide both leverage and risk mitigation, addresses investor protection concerns and reflects developments over the past decades.

Recognizing the dynamic, expanding and ever-changing marketplace, the Commission has directed the staff to review the effectiveness of existing regulatory requirements in protecting investors, particularly those with self-directed accounts, who invest in complex investment products (including leveraged or inverse products). Speaking more specifically, there is concern that retail investors are independently selecting complex products for which they may not fully appreciate the unique characteristics and risks.[37]

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[34] *See* Press Release 2020-57, SEC Adopts Investor Disclosure Improvements for Variable Annuities and Variable Life Insurance Contracts (Mar. 11, 2020), *available at* https://www.sec.gov/news/press-release/2020-57.
[35] *See* Press Release 2020-247, SEC Updates Regulatory Framework for Fund of Fund Arrangements (Oct. 7, 2020), *available at* https://www.sec.gov/news/press-release/2020-247.
[36] *See* Press Release 2020-269, SEC Adopts Modernized Regulatory Framework for Derivatives Use by Registered Funds and Business Development Companies (Oct. 28, 2020), *available at* https://www.sec.gov/news/press-release/2020-269.
[37] *See* Joint Statement Regarding Complex Financial Products and Retail Investors (Oct. 28, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-blass-hinman-redfearn-complex-financial-products-2020-10-28#_ftnref3.

Building on the Commission's work to establish a rules-based framework for most ETFs to come to market without the need for exemptive relief, the Commission adopted amendments in July 2020 to establish an expedited review procedure for exemptive and other applications under the Investment Company Act that are substantially identical to recent precedent.[38] These actions are intended to make the application process more efficient as well as to provide additional certainty and transparency regarding the process. Additionally, the Commission adopted amendments to modernize the offering process for BDCs and registered closed-end funds in accordance with congressional mandates.[39]

Asset Management Advisory Committee. Recognizing that asset management is a critical component of our markets and is especially important to Main Street investors, last October, the SEC's Asset Management Advisory Committee (AMAC) was formed to provide the Commission with diverse perspectives on asset management and related advice and recommendations.[40] Composed of individuals representing the views of retail and institutional investors, small and large fund complexes, small firms that provide services to retail investors, intermediaries, academics and other market participants, the AMAC has hosted five meetings this year that have focused on a number of issues, including the effects of COVID-19 on asset managers, MiFID II, private investments and the recent growth of environmental, social and governance-focused investing. The AMAC held two meetings to examine issues surrounding the lack of diversity and inclusion in the asset management industry, as well as data privacy and the impact of technology on investment advice.[41] The range of experience and perspectives that the AMAC has provided helps inform and ensure the Commission's regulatory approach to asset management meets the needs of retail investors and market participants at a time when the industry is evolving rapidly, and the AMAC has approved two recommendations to date regarding exchange-traded products and COVID-19 operational issues.

Modernizing Trading and Market Structure

Led by the Division of Trading and Markets, over the past several years, the Commission has completed a number of initiatives designed to help improve and modernize the structure of our equity markets. As technology and business practices evolve, so must consideration of our regulatory framework. This is irrefutably true for the regulation of our U.S. equity markets, which have undergone an almost unimaginable transformation in the last decade, largely driven by the deployment of a vast array of advanced communications and data analytics technologies.

Modernizing Market Data and Access. Market data is the fundamental source of transparency and price discovery for secondary trading in the public equity markets. Collecting, consolidating, and disseminating this data have formed the heart of the National Market System

[38] *See* Press Release 2020-150, SEC Adopts Amendments to Exemptive Applications Procedures (July 6, 2020), *available at* https://www.sec.gov/news/press-release/2020-150.
[39] *See* Press Release 2020-83, In Response to Self-Executing Congressional Mandates, SEC Adopts Offering Reforms for Business Development Companies and Registered Closed-End Funds (Apr. 8, 2020), *available at* https://www.sec.gov/news/press-release/2020-83.
[40] *See* Press Release 2019-208, SEC Announces the Formation of Asset Management Advisory Committee (Oct. 9, 2019), *available at* https://www.sec.gov/news/press-release/2019-208.
[41] *See* Spotlight on Asset Management Advisory Committee (AMAC), *available at* https://www.sec.gov/page/asset-management-advisory-committee.

(NMS) ever since Congress mandated its creation in 1975. Despite the technological evolution of markets, the provision of market data that is centrally consolidated and disseminated by the current market data plans is meaningfully slower and sometimes less detailed than certain exchange-specific proprietary market data products distributed by exchanges, which are generally transmitted faster and in some cases may provide richer and more detailed trading data than NMS data. As a result, the current system for consolidated market data is subject to potential conflicts of interest arising from the dual role of exchanges in both operating and overseeing the consolidated market data infrastructure, while offering their own proprietary data in direct competition with NMS data.

The Commission has moved forward with several initiatives focused on enhancing infrastructure and governance rules concerning market data distribution and market access—all with a view to improve our equity markets for Main Street investors. In February 2020, the Commission proposed changes to modernize the infrastructure for collecting, consolidating and disseminating NMS market data.[42] The proposal is designed to update the content of the information with respect to quotations for and transactions in NMS stocks and to introduce a decentralized consolidation model for the collection, consolidation, and dissemination functions currently performed by the exclusive Securities Information Processors (SIPs). The Commission expects to consider final recommendations from the staff regarding NMS infrastructure in the near term.

Regarding the governance of equity data plans, in May 2020, the Commission issued an order directing the equities exchanges and FINRA to submit a new, single NMS plan to govern the provision of consolidated market data with enhanced governance provisions designed to incorporate more diverse perspectives and address certain inherent conflicts.[43] The Commission will carefully consider all comments before deciding to approve, disapprove, or modify the proposed plan. Additionally, in August 2020, the Commission amended Rule 608 of Regulation NMS to rescind a provision that allowed a proposed amendment to a NMS plan to become effective upon filing if the proposed amendment establishes or changes a fee or other charge.[44] As a result, SIP data fees, as well as all other NMS plan fees, cannot become effective until after an opportunity for public comment and after approval by the Commission. Ultimately, I anticipate that the Commission's efforts to enhance these rules will greatly benefit investors by giving them better data on fair and reasonable terms, as well as generally promoting the integrity and efficiency of the U.S. equity markets.

Combatting Fraud in the OTC Markets. One of our top market structure objectives has been to combat fraud against retail investors. To modernize its rules to align with changes that have taken place in the over-the-counter (OTC) market over the past 30 years, and in addition to efforts to detect and address fraudulent conduct through enhanced examination and enforcement

[42] *See* Press Release 2020-34, SEC Proposes to Modernize Key Market Infrastructure Responsible for Collecting, Consolidating and Disseminating Securities Market Data (Feb. 14, 2020), *available at* https://www.sec.gov/news/press-release/2020-34.

[43] *See* Press Release 2020-103, SEC Directs Equity Exchanges and Financial Industry Regulatory Authority to Improve Governance of Market Data Plans (May 6, 2020), *available at* https://www.sec.gov/news/press-release/2020-103.

[44] *See* Press Release 2020-188, SEC Adopts Requirements to Ensure Public Notice, Comment, and Approval Prior to Effectiveness of NMS Plan Fees (Aug. 19, 2020), *available at* https://www.sec.gov/news/press-release/2020-188.

programs, the Commission has taken steps to be more proactive in protecting retail investors from incidents of fraud and manipulation in OTC securities. Following a roundtable on combating retail investor fraud in 2019, in September 2020, the Commission voted to adopt amendments to Rule 15c2-11, which governs the publication of quotations for securities in the over-the-counter (OTC) market.[45] These amendments modernize the rule and enhance investor protection by requiring more accurate and up-to-date information on these securities when they are quoted by broker-dealers, who act as gatekeepers to this market that is primarily used by retail investors. This work was of great personal importance to me and, even more so, members of Enforcement who have seen the personal devastation resulting from penny stock fraud. I believe these amendments, in combination with the recent staff bulletin on risks associated with omnibus trading accounts in low-priced securities,[46] will result in improved issuer disclosures and make it easier to detect, deter and prevent fraud in our OTC markets.

Fixed Income Market Structure Advisory Committee. The Fixed Income Market Structure Advisory Committee (FIMSAC) continues to provide insight into the structure and operations of the U.S. fixed income markets. In June 2020, the FIMSAC charter was extended to March 2021 to allow time to bring its work to completion and allow the Committee to continue assisting the Commission with its ongoing efforts to monitor, and as necessary or appropriate, respond to the effects of the COVID-19 pandemic on our fixed income markets.[47] Since its inception in 2017, the FIMSAC hosted 11 meetings and made 16 recommendations for action by the Commission and FINRA.[48] As part of the Commission's proposal to extend Regulations ATS and SCI to the Treasuries and government securities market, the Commission issued a concept release on the electronic corporate bond and municipal securities market.[49] This concept release, which drew on FIMSAC's recommendations, solicits public comment on a range of issues that will help inform our future policy concerning this critical aspect of our fixed income market structure.

Consolidated Audit Trail. The implementation of the consolidated audit trail (CAT) remains a key initiative that is intended to enhance regulatory oversight of our securities markets. While the initial design and implementation of the CAT presented various difficult issues, the SROs have made meaningful progress over the past year, including the start of broker-dealer

[45] *See* Press Release 2020-212, SEC Adopts Amendments to Enhance Retail Investor Protections and Modernize the Rule Governing Quotations for Over-the-Counter Securities (Sept. 16, 2020), *available at* https://www.sec.gov/news/press-release/2020-212.
[46] *See* Statement on Staff Bulletin Related to Risks Associated with Offshore Omnibus Accounts Transacting in "Penny Stocks" and other Low-Priced U.S. Securities (Nov. 12, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-statement-staff-bulletin-offshore-omnibus-accounts.
[47] *See* Remarks at Meeting of the Fixed Income Market Structure Advisory Committee (June 1, 2020), *available at* https://www.sec.gov/news/public-statement/remarks-meeting-fixed-income-market-structure-advisory-committee-060120.
[48] *See* Remarks at Meeting of the Fixed Income Market Structure Advisory Committee (Oct. 5, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-fimsac-2020-10-05; *see also* Spotlight on Fixed Income Market Structure Advisory Committee (FIMSAC), *available at* https://www.sec.gov/spotlight/fixed-income-advisory-committee.
[49] *See* Press Release 2020-227, SEC Proposes Rules to Extend Regulations ATS and SCI to Treasuries and Other Government Securities Markets (Sept. 28, 2020), *available at* https://www.sec.gov/news/press-release/2020-227.

reporting, which began in June 2020 for equities and July 2020 for options.[50] The Commission adopted amendments to the CAT NMS Plan in May 2020 to reduce the likelihood of further delays in the implementation of the CAT and to increase the transparency of and accountability for the implementation process.[51] These amendments require the SROs to file with the Commission and make publicly available an implementation plan and quarterly status reports. The amendments also establish provisions that are designed to introduce financial accountability in order to help ensure the SROs meet certain CAT implementation milestones in a timely fashion.

The protection of sensitive information submitted to the CAT continues to be of paramount importance, and I share many of the concerns that have been raised about the protection of any investors' personally identifiable information (PII) that would be stored in the CAT. As a threshold matter, it is important to note that data collection is not an end to itself, and the SEC must not be in the business of ill-defined data warehousing. To remain a trusted, respected and effective regulator, we must be mindful of the volume of data we collect, as well as its sensitive nature, and be principled and responsible users of data and regularly evaluate the scope of and need for any data entering the CAT system. I believe the CAT's regulatory objectives can be achieved without collection of the most sensitive pieces of retail investor information. It is important to minimize the impact of any potential data breaches, while also evaluating the need for cybersecurity improvements to the CAT. To that end, the Commission acted to provide relief to permit only phone-book type data—name, address and birth year—to be included in the CAT.[52] I believe this action significantly minimizes the impact of any potential data breaches and represents an important step in significantly reducing the risk associated with the CAT.

Even with efforts to significantly reduce the scope of PII included in the CAT, the nature of the data to be included in the CAT necessitates robust security protections. While the CAT NMS Plan developed by the SROs includes specific security requirements designed to mitigate the risk of a breach of the CAT and the possibility of misuse of data reported to the CAT, in August 2020, the Commission proposed amendments to further bolster the data security of the CAT.[53] The requirements outlined in the proposal, including eliminating the requirement to collect sensitive PII, are designed to both: (1) significantly reduce the amount of sensitive data collected without affecting the regulatory value of the CAT; and (2) provide greater oversight, consistency and transparency regarding the appropriate use of CAT data. We will continue to evaluate these matters as implementation and operation of the CAT continues. Further, with regard to the use of the CAT by the SEC, as I have previously noted, I believe the SEC should not retrieve any sensitive PII from the CAT unless there is a regulatory need for the

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[50] *See* Update on the Consolidated Audit Trail: Data Security and Implementation Progress (Aug. 21, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-kimmel-redfearn-nms-cat-2020-08-21. In support of these implementation efforts, the Commission has issued several exemptive orders addressing operational issues.
[51] *See* Press Release 2020-114, SEC Adopts Amendments to the CAT NMS Plan to Improve Transparency and Financial Accountability (May 15, 2020), *available at* https://www.sec.gov/news/press-release/2020-114.
[52] *See* Update on Consolidated Audit Trail; Temporary COVID-19 Staff No-Action Letter; Reducing Cybersecurity Risks (Mar. 17, 2020), *available at* https://www.sec.gov/news/public-statement/statement-clayton-cat-covid-19-nal-cybersecurity-2020-03-17.
[53] *See* Press Release 2020-189, SEC Proposes Data Security Enhancements to the CAT NMS Plan (Aug. 21, 2020), *available at* https://www.sec.gov/news/press-release/2020-189.

information, and we are confident that there are appropriate protections in place to safeguard the information.

Regulatory Coordination and Interagency Efforts

In addition to coordination with respect to COVID-19, the SEC and its staff have collaborated with our regulatory counterparts on a number of rulemaking and other policy initiatives.

Title VII Harmonization and Related Efforts. The Commission has worked closely with the CFTC on implementing the Title VII regulatory regime under the Dodd-Frank Act. Completing the necessary rules to begin standing up the Title VII regulatory regime is a major achievement for the Commission and allows us to move forward with implementation. In addition, continuing our efforts to further harmonize our respective regulatory regimes to better serve markets and investors, in October 2020, the SEC and CFTC held the first joint open meeting to consider rulemaking and approved a joint final rule to harmonize the minimum margin level for security futures held in a futures account with the minimum margin level for security futures held in a securities portfolio margin account and issued a joint request for comment on the portfolio margining of uncleared swaps and non-cleared security-based swaps.[54]

Improving the Volcker Rule. Additionally, the SEC continued to work with the Federal Reserve Board, the CFTC, the FDIC and the Office of the Comptroller of the Currency (collectively, the "Volcker agencies") to improve the rule based on our experience overseeing compliance with its requirements and in response to feedback received in the course of implementing the Volcker Rule. Most recently, in June 2020, the Volcker agencies acted to further improve the rule, in part, by excluding from the "covered fund" definition certain types of investment vehicles that do not present the risks that the Volcker Rule was intended to address.[55] I believe that, collectively, these amendments will improve application of the Volcker Rule in a number of respects.

Competition. As illustrated in the Commission's rulemaking activities and agenda, the SEC has been keenly focused on ensuring that our capital markets are competitive, including rooting out illegal anticompetitive behavior through regulatory cooperation. To assist the Commission in considering matters relating to competition, this summer, the SEC and the Department of Justice's Antitrust Division signed an interagency Memorandum of Understanding (MOU) to foster cooperation and communication between the agencies with the aim of enhancing competition in the securities industry.[56] Work pursuant to this MOU has already benefited our rulemaking efforts.

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[54] *See* Press Release 2020-264, At Joint Open Meeting, SEC and CFTC Approve Final Rule on Security Futures Margin and Request for Comment on Portfolio Margining (Oct. 22, 2020), ***available at*** https://www.sec.gov/news/press-release/2020-264.

[55] *See* Press Release 2020-143, Financial Regulators Modify Volcker Rule (June 25, 2020), ***available at*** https://www.sec.gov/news/press-release/2020-143.

[56] *See* Press Release 2020-140, Securities and Exchange Commission and Justice Department's Antitrust Division Sign Historic Memorandum of Understanding (June 22, 2020), ***available at*** https://www.sec.gov/news/press-release/2020-140.

Emerging Markets. Over the past decade, U.S. investors, and the capital markets more generally, have increased exposure to companies with significant operations in emerging markets, including China—the largest emerging market and the world's second largest economy. Investments in emerging markets, including China, entail significant disclosure, financial reporting and other risks for U.S. investors. While the federal securities laws and regulations applicable to emerging market companies listed on U.S. exchanges are the same as (or comparable to) the laws and regulations applicable to U.S. public companies, the practical effects are substantially different, due to the inability of U.S. regulators to inspect for compliance and enforce these rules and regulations. This is a fundamental issue in emerging market investing that I believe investors, particularly our Main Street investors, should better understand. This status quo of a materially unlevel playing field with respect to PCAOB inspections for issuers from certain emerging markets is unacceptable.

In order to bring greater attention to these risks, beginning in 2018, SEC staff and I, along with the Chairman of the PCAOB, have issued several joint statements outlining the significant risks related to investments in China due to the inability of the PCAOB to inspect audit work and practices of PCAOB-registered accounting firms in China.[57] Recognizing the difficulties we face with inspection and enforcement, I, along with SEC staff, have also engaged with U.S. auditing firms including certain of their global network representatives regarding the significance of their work and the importance of their diligence efforts with respect to their work in China. To further promote engagement and help inform our consideration of these issues, in July, the SEC held a roundtable where investors, other market participants, regulators and industry experts discussed issues related to the risks of investing in emerging markets, including China.[58] In connection with this roundtable, the SEC also opened a public comment page to provide members of the public an opportunity to submit their views as well as review the views of others.[59]

On August 6, 2020, the President's Working Group on Financial Markets released its Report on Protecting United States Investors from Significant Risks from Chinese Companies (PWG Report).[60] The PWG Report includes five recommendations for the SEC that are centered on strengthening protections for investors and promoting the integrity of our capital markets by: (1) leveling the playing field for all companies listed on U.S exchanges; and (2) improving disclosure regarding, and consideration by fiduciaries and other market professionals of, the risks of investing in emerging markets, including China. These recommendations were informed by, and I believe are consistent with, bipartisan legislation being considered by Congress to address these important issues. I have directed the SEC staff to prepare proposals in response to the PWG Report's recommendations for consideration by the Commission and to

[57] *See* Emerging Market Investments Entail Significant Disclosure, Financial Reporting and Other Risks; Remedies Are Limited (Apr. 21, 2020), *available at* https://www.sec.gov/news/public-statement/emerging-market-investments-disclosure-reporting.
[58] *See* Press Release 2020-116, SEC Staff to Host July 9 Roundtable on Emerging Markets (May 19, 2020), *available at* https://www.sec.gov/news/press-release/2020-116.
[59] *See* Spotlight on Risks for Investors in Emerging Markets, *available at* https://www.sec.gov/page/emerging-markets-roundtable.
[60] President's Working Group on Financial Markets, Report on Protecting United States Investors from Significant Risks from Chinese Companies (July 24, 2020), *available at* https://home.treasury.gov/system/files/136/PWG-Report-on-Protecting-United-States-Investors-from-Significant-Risks-from-Chinese-Companies.pdf.

provide assistance and guidance to investors and other market participants as may be necessary or appropriate. To be clear, I welcome congressional action to address these issues, and we stand ready to provide technical assistance, as requested.

Climate Change and Issuer Disclosure. The issue of climate change and its current and potential future impact on issues, including as a result of regulatory and other developments is one where we are engaged on many levels, including with our domestic and international counterparts. As a threshold matter, I note that, to the extent material, issuers are required to disclose the current and expected future effects of climate-related issues on their operations and performance. It is important that all disclosure, including climate-related disclosure, be "decision-useful." In other words, that it provides investors with the ability to incorporate this information regarding the current and future performance of the issuer into their investment decision-making process.

I and others at the Commission have invested substantial time and effort, domestically and internationally, in this area, including through our participation in various IOSCO and FSB efforts. As examples, at IOSCO, we have been active participants in the Sustainability Finance Network and have supported the work of the FSB's Task Force on Climate-Related Financial Disclosures (TCFD).

It has often been noted that this process can be more efficient if disclosure is standardized or uniform. However, standardization can be difficult across industries, and in particular, forward-looking information can be difficult to standardize in that different participants within and across industries may reasonably have differing assumptions about future developments. I have discussed these considerations in some detail previously. In particular, efforts to "score" a particular investment (e.g., a mutual fund or ETF) from an overall environmental or "ESG" perspective appear particularly problematic.[61] In addition, forcing metric-specific standardization in this area, particularly across differing sectors (e.g., insurance, biotechnology, data services and transportation), may lead to a loss of information and the insights that can be derived from examining a range of well-informed, company and sector-specific disclosures. That said, as noted above, we are diligently working through this complex issue through various domestic and international channels to see if greater standardization or comparability can be achieved, particularly within specific sectors. Personally, I am of the view that improving the decision useful nature of disclosures in this area, including efforts to enhance comparability, may be best approached through broad principles, applied on a sector-by-sector basis. Again, from my perspective, I believe the work of international bodies, for example TCFD as discussed in its recent 2020 Status Report, is trending in this direction.[62]

[61] *See* Remarks at Asset Management Advisory Committee Meeting (May 27, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-amac-opening-2020-05-27.

[62] *See* 2020 Status Report: Task Force on Climate-related Financial Disclosures (Oct. 29, 2020), *available at* https://www.fsb.org/2020/10/2020-status-report-task-force-on-climate-related-financial-disclosures/.

Enforcement, Compliance and Investor Engagement

Pursuing Enforcement Matters that are Meaningful to Main Street Investors

The ongoing efforts by the Enforcement to deter misconduct and punish securities law violators are critical to safeguarding millions of investors and instilling confidence in the integrity of our markets. Despite the unprecedented challenges posed by the global pandemic, the nature and quality of the SEC's enforcement actions during the last year speak volumes to the hard work of the women and men of the agency. Their efforts over the past year have made our capital markets a safer place for investors to put their hard-earned money to work.

I have often noted that purely quantitative measures alone cannot adequately measure the effectiveness of our Enforcement program. Rather, it should be evaluated by assessing the nature, quality and effects of each of the Commission's enforcement actions with an eye toward how they further the agency's mission. By all measures, our enforcement efforts over the past year, especially in light of the challenges presented by COVID-19, have been successful. In FY 2020, Enforcement brought over 700 actions, a significant percentage of which occurred after transitioning to mandatory telework.[63] In addition to the COVID-19-related actions, the Commission's enforcement actions over the last year have covered a broad range of subject areas, including investment management, securities offerings, issuer reporting and accounting, market manipulation, insider trading, broker-dealer activities, cyber-related conduct and Foreign Corrupt Practices Act (FCPA) violations, among many others. The Commission obtained judgments and orders for more than $4.5 billion in financial remedies—the highest amount on record—and returned more than $600 million to harmed investors.

Importantly, Enforcement's efforts have led to real, lasting impacts for Main Street investors. The Teachers Initiative and Military Service Members Initiative, led by Enforcement's Retail Strategy Task Force (RSTF), have continued to focus additional enforcement and investor education resources on protecting teachers, veterans, and active duty military personnel, particularly in the areas of savings and investment, investment fees and expenses, retirement programs specific to educators and service members and the red flags of investment fraud.[64] In addition, the RSTF continues to pursue fraud against and help educate investors about potential scams targeting members of identifiable groups, such as religious or ethnic communities, senior citizens or the differently abled.[65]

[63] *See* SEC Division of Enforcement 2020 Annual Report, *available at* https://www.sec.gov/files/enforcement-annual-report-2020.pdf.

[64] In July 2020, the Commission charged VALIC Financial Advisors Inc. (VFA) in a pair of actions for failing to disclose to teachers and other investors practices that generated millions of dollars in fees and other financial benefits for VFA. As part of resolving this matter, VFA agreed to cap advisory fees for certain groups of teachers in VFA programs, which will result in significant savings for thousands of teachers. *See* Press Release 2020-164, SEC Charges VALIC Financial Advisors with Failing to Disclose Payments to Promote Services to Florida Educators (July 28, 2020), *available at* https://www.sec.gov/news/press-release/2020-164.

[65] For example, working with OIEA and the Commission's Office of Public Affairs, the RSTF helped create a video using American Sign Language to teach investors in the deaf and hard of hearing community about how to spot frauds in their communities, which was tied to an action brought by the Commission against a Swedish national living in Thailand who allegedly conducted a multi-million dollar online offering fraud that victimized thousands of retail investors worldwide, including over 800 investors who were members of the deaf community. *See* Press

The Commission also announced the final actions under the Share Class Selection Disclosure Initiative, which focused on investment advisers who did not adequately disclose conflicts as a result of their receipt of compensation in the form of 12b-1 fees. In total, this initiative resulted in the Commission ordering 97 investment advisers that voluntarily self-reported to return more than $139 million to harmed clients.[66] This initiative also brought about lasting benefits for retail investors and market participants more generally, including by comprehensively remedying deficiencies in the disclosure of fees and conflicts, resulting in better information and lower costs for investors.

Enforcement's Cyber Unit continues to focus on, among other things, potential violations involving distributed ledger technology, cyber intrusions and hacking to obtain material, non-public information. Cyber Unit staff members work closely with the SEC's Strategic Hub for Innovation and Financial Technology (FinHub) on cases involving distributed ledger technology and digital assets. For example, the Commission filed an emergency action against Telegram alleging that its unregistered offering of digital tokens violated the federal securities laws, and after the court halted the offering, the Commission reached a settlement where Telegram agreed to return more than $1.2 billion to investors.[67] The Cyber Unit and Enforcement as a whole have also continued to focus on cybersecurity threats to public companies and regulated entities, including our public company disclosure requirements.

The SEC's Whistleblower Program had a historic year on multiple fronts. Since the program's inception 10 years ago, whistleblowers have made meaningful contributions to numerous actions. The Commission has been dedicated to improving the review and award process, and the Office of the Whistleblower, in partnership with other Enforcement staff, has worked to streamline and substantially accelerate the evaluation of claims for whistleblower awards. As a result, the Commission awarded 39 whistleblowers a total of over $175 million in FY 2020 alone—higher in terms of both dollars and number of awards than in any previous year.[68] In October 2020, the Commission issued its largest ever award to a single whistleblower, $114 million.[69] In September 2020, the Commission adopted amendments intended to provide greater transparency, efficiency and clarity, as well as strengthen, the Whistleblower Program.[70]

Finally, in my view, protecting retail investors also means, whenever possible, putting money back in their pockets as soon as possible after they are harmed by violations of the federal securities laws. To that end, we have continued our efforts to return funds to harmed investors as promptly as practicable, and since FY 2017, the Commission has returned approximately $3.5

Release 2020-232, SEC Charges Swedish National with Global Scheme Defrauding Retail Investors, Including Deaf Community Members (Sept. 29, 2020), *available at* https://www.sec.gov/news/press-release/2020-232.

[66] *See* Press Release 2020-90, SEC Orders Three Self-Reporting Advisory Firms to Reimburse Investors (Apr. 17, 2020), *available at* https://www.sec.gov/news/press-release/2020-90.

[67] *See* Press Release 2020-146, Telegram to Return $1.2 Billion to Investors and Pay $18.5 Million Penalty to Settle SEC Charges (June 26, 2020), *available at* https://www.sec.gov/news/press-release/2020-146.

[68] *See* Press Release 2020-240, SEC Whistleblower Program Ends Record-Setting Fiscal Year With Four Additional Awards (Sept. 30, 2020), *available at* https://www.sec.gov/news/press-release/2020-240.

[69] *See* Press Release 2020-266, SEC Issues Record $114 Million Whistleblower Award (Oct. 22, 2020), *available at* https://www.sec.gov/news/press-release/2020-266.

[70] *See* Press Release 2020-219, SEC Adds Clarity, Efficiency and Transparency to Its Successful Whistleblower Award Program (Sept. 23, 2020), *available at* https://www.sec.gov/news/press-release/2020-219.

billion to harmed investors, with more than $600 million returned this past fiscal year. Last month, the SEC also announced the newly formed Office of Bankruptcy, Collections, Distributions and Receiverships to centralize existing functions and achieve efficiencies and maximize results for investors.[71] We remain committed to this important part of our work, and we will continue our efforts to return funds to victims with greater efficiency this year as well.

The ability to order disgorgement, the returning or repayment of ill-gotten gains obtained from violations of the securities laws, is one of the Commission's most important tools. In *Liu v. SEC*, the Supreme Court rejected a challenge to the Commission's ability to seek, and district courts' authority to award, disgorgement of money acquired through misconduct—a result that is particularly meaningful given the Court's prior decision in *Kokesh v. SEC*. The *Liu* decision, however, imposed certain limitations on the Commission's ability to seek disgorgement and left open several questions. The impacts of the *Kokesh* decision, which prohibits the SEC's ability to seek disgorgement of ill-gotten gains beyond the five year statute of limitations, also remain significant. Since *Kokesh* was decided, more than $1 billion in ill-gotten gains has been unavailable for possible distribution to harmed investors. Said simply, allowing clever fraudsters to keep their ill-gotten gains at the expense of our Main Street investors—particularly those with fewer savings and more to lose—is inconsistent with basic fairness and undermines the confidence that our capital markets are fair and efficient and provide Americans with opportunities for a better future.

I agree that statutes of limitations serve important functions in our legal system, and for important public policy reasons, actions should have reasonable limitations periods.[72] Civil and criminal authorities, including the SEC, should do everything in their power to bring appropriate actions swiftly and should be incentivized to do so.[73] However, as I look across the scope of misconduct we encounter, including most notably Ponzi schemes and affinity frauds, I am troubled by the substantial amount of losses that we have not been able to recover for Main Street investors. I greatly appreciate the bipartisan, bicameral work underway to safeguard the Commission's disgorgement remedy and ensure the Commission is able to seek recoveries in cases of well-concealed, long-running frauds so that defrauded retail investors can get their investment dollars back, while remaining true to the principles embedded in statutes of limitations.

Protecting Investors and Improving Investment Options by Promoting Compliance

OCIE is responsible for conducting examinations of entities registered with the SEC, including more than 13,800 investment advisers, approximately 10,000 mutual funds and ETFs,

[71] *See* Press Release 2020-250, SEC Names Nichola L. Timmons Chief of New Office of Bankruptcy, Collections, Distributions, and Receiverships (Oct. 7, 2020), *available at* https://www.sec.gov/news/press-release/2020-250.
[72] Particularly with respect to our public markets, the certainty brought by reasonable limitations periods has significant value for all investors. To be clear, I am less concerned about the restraints of a five-year limitations period for disgorgement action in our public capital markets where there are more causes of action and safeguards available to protect investors and to remediate harm.
[73] Indeed, the Commission's cases have the greatest impact when they are filed as close in time to the conduct as possible. Our Enforcement Division is focused on accelerating the pace of investigations and has made notable progress in this respect over recent years. We are committed to bringing meaningful actions promptly, and I would not expect any changes to the limitations period applicable to disgorgement claims to deter us from this effort.

more than 3,600 broker-dealers, about 350 transfer agents, nine clearing agencies, 24 national securities exchanges, more than 500 municipal advisors, FINRA and the Municipal Securities Rulemaking Board (MSRB), as well as the Securities Investor Protection Corporation and the PCAOB, among others. The results of OCIE's examinations are used by the SEC to identify and monitor risks, promote compliance and improve industry practices, pursue misconduct and inform rulemaking initiatives. OCIE's 2020 Examination Priorities reflect a continued focus on the protection of retail investors, particularly seniors and those saving for retirement. In particular, OCIE closely reviewed products and services offered to retail investors, the disclosures they receive about those investments and the financial services professionals who serve them, as well as several other areas that present heightened risk. These areas include, among others, compliance and risks related to critical market infrastructure, information and cybersecurity and anti-money laundering programs. OCIE also published eight Risk Alerts, and continuing its leadership in mitigating cyber risk, OCIE published a report on cybersecurity and resiliency and established the Event and Emerging Risks Examination Team to proactively respond to emerging threats and market events.[74]

During FY 2020, OCIE conducted nearly 3,000 examinations, covering 15 percent of all registered investment advisers.[75] Notably, in FY 2020, OCIE was able to conduct nearly as many examinations and achieved the same coverage ratio for registered investment advisers as FY 2019 despite significant disruptions caused by the COVID-19 pandemic. OCIE continues to enhance its risk-based inspections and exam program by collecting and analyzing a wide variety of data from registrants and other sources to identify potentially problematic activities and firms as well as prominent risk themes.

Engagement with Investors and Market Participants

Engagement with investors and other market participants is key to furthering the agency's mission. Proactive discussions help to drive the Commission's agenda, while soliciting external feedback allows staff to evaluate the effectiveness of proposals and existing regulations. SEC staff adapted these efforts to the mandatory telework posture quickly, including by reimagining outreach events and meetings to ensure that the conversation between the agency and investors and market participants continued throughout the pandemic. Leadership in our divisions and offices, as well as our dedicated staff, is open to hearing from and meeting with investors and market participants on areas where our markets are not working as they should or can be improved—particularly as it relates to our long-term Main Street investors.

Investor Outreach

Over the past year, the SEC has continued its robust investor education and outreach programs to promote informed investment decision-making and provide the investing public

[74] *See* Press Release 2020-20, SEC Office of Compliance Inspections and Examinations Publishes Observations on Cybersecurity and Resiliency Practices (Jan. 27, 2020), *available at* https://www.sec.gov/news/press-release/2020-20; Press Release 2020-165, SEC Announces Creation of the Event and Emerging Risk Examination Team in the Office of Compliance Inspections and Examinations and the Appointment of Adam D. Storch as Associate Director (July 28, 2020), *available at* https://www.sec.gov/news/press-release/2020-165.

[75] This is up from 10 percent five years ago, even as the number of registered investment advisers continues to grow.

with a better understanding of our capital markets, as well as the opportunities and risks associated with the array of investment choices presented to them. Spearheaded by OIEA, SEC staff conducted more than 400 investor education events focused on different segments of the population, including senior citizens, current and former military personnel, teachers, younger investors and other affinity groups.

We have continued outreach and education efforts as part of the Teachers Initiative to educate teachers about saving and investing, investment fees and expenses, retirement programs specific to educators and the red flags of investment fraud. For example, in connection with Teacher Appreciation Week, SEC staff released new multimedia resources to support educators, including a guided reference presentation designed to inform educators about how to invest wisely and a curated collection of online resources and lesson plans to help teachers incorporate financial literacy in their classrooms.[76] I also participated in a special episode of the Teacher Investment Outreach program podcast series for teachers. Throughout the week, staff across the SEC's headquarters and 11 regional offices participated in national teacher outreach efforts coordinated by OIEA. We also expanded our Military Service Members Initiative by engaging with service members and their families through more than 100 in-person and virtual briefings and other virtual engagements.

OIEA also issued a variety of investor alerts and bulletins during the year to warn Main Street investors about possible fraudulent schemes and educate them on investment-related matters. In addition, the New York Regional Office and Fordham University School of Law hosted a conference on combating community-based financial fraud, which focused on fraudulent and manipulative schemes that target potential victims based on race, ethnicity, religion, gender, age and other associations.[77] Conference participants from the SEC, the Department of Justice, Federal Bureau of Investigation, North American Securities Administrators Association and FINRA discussed effective strategies for detecting, preventing and combating community-based financial fraud.

OIEA has programs for investors that can be delivered locally, and we welcome the opportunity to work with your offices to conduct nonpartisan, investor education and outreach events. If such programs would be of interest, the Office of Legislative and Intergovernmental Affairs and OIEA can work with your staff to tailor a presentation to the needs of the audience.

Engagement with Market Participants

Engaging with America's entrepreneurs is also important to our mission, especially during these times of economic stress. The Office of the Advocate for Small Business Capital Formation (OASB), which began operations in 2019, gives entrepreneurs and small business investors new avenues to engage with the SEC and navigate opportunities for capital formation, ranging from start-up companies to small-cap companies. In June 2020, OASB hosted the SEC's 39th annual Government-Business Forum on Small Business Capital Formation (Forum) in an

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[76] *See* Press Release 2020-102, SEC Commemorates Teacher Appreciation Week, Highlights Ongoing Commitment to Serving Teachers (May 5, 2020), *available at* https://www.sec.gov/news/press-release/2020-102.
[77] *See* Press Release 2019-222, SEC and Fordham University School of Law to Host Conference on Combating Community-Based Financial Fraud (Oct. 28, 2019), *available at* https://www.sec.gov/news/press-release/2019-222.

entirely virtual setting, where this year's theme was "Access to Capital: More Critical Now Than Ever."[78] Members of the public and private sectors—including entrepreneurs, small business leaders, investors, market participants and other thought leaders within the small business capital formation ecosystem—gathered virtually to craft suggestions to improve securities policy affecting how small and mid-size companies, including minority-, women-owned and other underrepresented businesses, raise capital. In September 2020, the SEC released the Annual Report from the Forum, and I am pleased the SEC has acted on many of the report's recommendations.[79]

As part of its outreach efforts, OASB engages with diverse groups of small business thought leaders through events, speaking engagements and educational materials, including through virtual "coffee breaks" and educational videos that provide high-level, plain language summaries of policy and rulemaking initiatives.[80] Additionally, later this month, the SEC is hosting a virtual forum featuring women entrepreneurs and investors of color from Los Angeles and Atlanta discussing their business experiences and ways to improve access to capital for minority- and women-owned businesses.

Divisions and offices across the SEC have hosted and participated in multiple virtual conferences in 2020 for municipal securities market participants. For example, the Office of Municipal Securities (OMS) hosted a conference focused on secondary disclosure in the municipal securities market and reached nearly 500 virtual attendees.[81] These conversations were all the more important given the particular effects of COVID-19 on the municipal markets.

Standards of Conduct Implementation

The compliance date for Regulation Best Interest (Reg BI) and Form CRS began June 30, 2020 after their adoption in June 2019. Reg BI, adopted after many decades of debate regarding potential enhancements to the obligations of broker-dealers, substantially increased the obligations of broker-dealers when making a recommendation of any securities transaction or investment strategy (including account recommendations) to a retail customer, bringing them in line with reasonable customer expectations. Form CRS is a brief relationship summary designed to help retail investors make informed choices regarding what type of relationship (brokerage, investment advisory or a combination of both) best suits a retail investor's particular circumstances and investment objectives. Reg BI and Form CRS, together with the interpretations adopted contemporaneously by the Commission, raise the bar, in terms of both legal requirements and mandated disclosures, for firms serving retail investors, while preserving access (in terms of both choice and cost) to a variety of investment services and products. I believe preserving choice, with added protections and transparency, has proven to be particularly

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[78] *See* Press Release 2020-133, SEC Announces Speakers for June 18 Small Business Forum: "Access to Capital: More Critical Now than Ever" (June 16, 2020), *available at* https://www.sec.gov/news/press-release/2020-133.
[79] *See* SEC Releases Report and Recommendations on the 39th Annual Small Business Forum (Sept. 14, 2020), *available at* https://www.sec.gov/news/press-release/2020-210.
[80] *See* Press Release 2020-77, SEC Small Business Advocate to Host Virtual Coffee Breaks Discussing Small Business Capital Raising (Mar. 31, 2020), *available at* https://www.sec.gov/news/press-release/2020-77; *see also* Small Business Capital Formation Video Gallery, *available at* https://www.sec.gov/page/oasb-videos.
[81] *See* Press Release 2020-121, SEC Announces Virtual Conference on Municipal Securities Disclosure (May 22, 2020), *available at* https://www.sec.gov/news/press-release/2020-121.

important as market conditions, investment options and investor preferences have changed, including as a result of our historically low interest rate environment where recurring fees can erode or even eliminate the yields on fixed income instruments.

In the lead up to the compliance date, SEC staff engaged extensively with market participants and retail investors, as well as FINRA and other regulatory partners. This engagement is continuing. Staff have issued responses to FAQs about Reg BI and Form CRS, as well as Risk Alerts providing information about initial examinations focusing on these new requirements.[82] The SEC's Standards of Conduct Implementation Committee conducted a preliminary review and observed how a diverse cross-section of firms have implemented the content and format requirements of Form CRS. SEC staff, along with FINRA, held a roundtable last month to discuss initial observations on the implementation of and compliance with Reg BI and Form CRS in October 2020.[83] Since the June 30, 2020 compliance date, staff have been reviewing firms' compliance efforts and believe that firms generally meeting their obligations under Reg BI and making good efforts to meet the content and format requirements of Form CRS, though they have noted areas where certain disclosures could be improved.[84]

To help Main Street investors better understand Form CRS and its benefits, the Commission has established a new investor-focused webpage.[85] Additionally, I have highlighted areas where I believe it may be necessary for firms to exercise increased care when making recommendations to Main Street investors—particularly under the current market conditions—including rollovers and withdrawals from retirement plans, complex or risky products, COVID-19-related investments and special purpose acquisition corporations, or SPACs, and other companies with complex structures.[86] The Commission will continue to focus on the interests of our Main Street investors, and we remain committed to enhancing the quality and transparency of their relationships with their financial professionals.

Moving Forward

My tenure as the 32nd Chairman of the Commission will come to an end in the coming weeks and, as it has for 85 years, the Commission will move on with their work that is so

[82] *See* Risk Alert: Examinations that Focus on Compliance with Regulation Best Interest (Apr. 7, 2020), *available at* https://www.sec.gov/files/Risk%20Alert-%20Regulation%20Best%20Interest%20Exams.pdf; Risk Alert: Examinations that Focus on Compliance with Form CRS (Apr. 7, 2020), *available at* https://www.sec.gov/files/Risk%20Alert%20-%20Form%20CRS%20Exams.pdf.

[83] *See* Press Release 2020-260, SEC Releases Agenda for October 26 Roundtable on Regulation Best Interest and Form CRS, *available at* https://www.sec.gov/news/press-release/2020-260.

[84] *See* Statement at the SEC's Staff Roundtable on Regulation Best Interest and Form CRS (Oct. 26, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-statement-roundtable-reg-best-interest-crs-102620; Joint Statement Regarding New FAQs for Form CRS (Oct. 8, 2020), available at https://www.sec.gov/news/public-statement/joint-statement-faq-form-crs; Joint Statement Regarding Complex Financial Products and Retail Investors (Oct. 28, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-blass-hinman-redfearn-complex-financial-products-2020-10-28

[85] *See* https://www.investor.gov/home/welcome-investor-gov-crs.

[86] *See* Joint Statement Regarding Complex Financial Products and Retail Investors (Oct. 28, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-blass-hinman-redfearn-complex-financial-products-2020-10-28; Confirmation of June 30 Compliance Date for Regulation Best Interest and Form CRS (June 15, 2020), *available at* https://www.sec.gov/news/public-statement/clayton-compliance-date-regulation-best-interest-form-crs. .

important to our investors and our economy more generally. Their expertise and collective commitment, combined with the exceptional statutory and regulatory framework our predecessors provided, will hold the agency in very good stead. As always, there remains important and pressing work to do, including that in the area of our response to COVID-19. In my view, we are not out of the woods yet and need to continue to perform our role in monitoring our markets and coordinating with our fellow financial regulators, domestically and internationally.

More broadly, I offer again the advice I gave over a year ago, and feel even more strongly about that today. My view is the Commission best earns and maintains its effectiveness, authority and independence by (1) recognizing the broad financial regulatory landscape; (2) identifying our core responsibilities within that landscape; and (3) using our expertise and experience to discharge those core responsibilities as promptly and effectively as possible. In other words, the Commission best maintains its effectiveness, authority and independence by "staying in its lane" and not putting its hard-earned, well-deserved reputation at unnecessary risk by straying from our expertise and mission. Focusing on substance, core mission and the interests of our long-term Main Street investors has proven, time and again, to be a constructive approach. It is the organic approach our staff has long followed, it is the approach that has solidified our important position in our financial markets ecosystem and it is the approach that has enabled us to act on a remarkably large and diverse agenda over the past several years.

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Thank you again for the opportunity to testify about the exemplary work of the women and men of the Commission over the past year, and I look forward to your questions.

RESPONSE TO WRITTEN QUESTION OF CHAIRMAN CRAPO FROM JAY CLAYTON

Q.1. In September, the House of Representatives passed H.R. 6210, the Uyghur Forced Labor Prevention Act by a vote of 406 to 3.

This bill, similar to S. 3471, contains a number of restrictions intended to punish those responsible for the horrific human rights violations occurring in China's Xinjiang Uyghur Autonomous Region. Most notable among the restrictions is the creation of a new SEC disclosure regime for issuers who knowingly engage or transact with an entity involved in the oppression of the Uyghurs. The bill also addresses the Uyghur's situation by prohibiting certain imports, imposing sanctions, and requiring reviews of strategy and reporting of tariffs.

After the initial broad bill passed the House, the House voted on H.R. 6270, which contained solely the new SEC disclosure regime. This bill passed the House along party lines.

As Congress considers taking action to punish and isolate those in this region for their heinous crimes, I have grave concerns about creating a new disclosure regime at the SEC, rather than utilizing the existing pressure channels available to the Departments of Treasury, Commerce, State, Defense, and others.

A.1. Does the SEC view that a new disclosure regime, which will take years and billions of dollars in compliance costs to establish is necessary in order to stop forced Uyghur labor in China?

I personally appreciate the focus in Congress on addressing the dreadful human rights abuses occurring in China's Xinjiang Uyghur Autonomous Region. Stopping forced Uyghur labor in China is an important and laudable goal that I support. I believe, however, this goal would be much more effectively and efficiently addressed through direct regulation of conduct rather than indirectly through the Federal securities laws. In my opinion, significantly more direct actions like restricting imports and imposing sanctions for transactions that further the abhorrent behavior in the Uyghur region are more likely to alter behavior and would likely affect a much greater number of companies and individuals than a new SEC disclosure regime for U.S.-listed public companies. It also would focus Federal action within agencies that have both the authority, as well as the expertise, in resolving these important issues.

Disclosure is, of course, extremely important to investors and our markets, and companies should closely monitor their supply chains and provide investors with information about supply chain risks that would be material to an investment decision. In analyzing these risks, public companies should carefully consider, for example, whether congressional action designed to stop forced Uyghur labor in China or consumer actions would be reasonably likely to materially affect their business and supply chains, and if so, provide disclosure about these evolving regulatory risks and uncertainties.

More broadly, based on my 25-plus years' experience with our securities laws and the securities laws of other countries in the private and public sectors, it is my view that any use of our Federal securities laws for purposes beyond the SEC's core mandate should be approached with great caution. These efforts have proven to be much less effective than anticipated for a variety of reasons, including, in particular, in the case of international and global issues, the limitation on the SEC's jurisdiction and practical authority, as well as the asymmetries in applicable law they often create (favoring those to whom U.S. law does not apply). In short, in these instances, the limits on the SEC's authority often serves to advantage those outside its scope and, in my view, have rendered such efforts ineffective when viewed on an international or global basis.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN FROM JAY CLAYTON

Updating 10b5–1 Trading Plans

Q.1. In your testimony, you stated that regulations and policies applicable to corporate stock buybacks and executive stock sales could be improved, including the use of "cooling-off" periods. Please describe further the types of requirements and prohibitions that you would recommend to ensure that 10b5–1 trading plans are not abused or manipulated and to avoid even the appearance of impropriety.

A.1. The importance of good corporate hygiene cannot be overstated, nor can the importance of related controls designed to prevent not only insider trading but also the appearance of impropriety or misalignment of interests. Particularly in times of heightened market volatility and uncertainty, the potential for executives to possess material nonpublic information increases, as we have witnessed during this time of COVID–19-induced economic and market stress. While I believe many of our public companies, as a general matter, have discharged their responsibilities in the related areas of public disclosure and corporate controls well, there are some specific measures that would improve compliance, market integrity, and investor confidence, including through a demonstrated commitment to good corporate hygiene.

First, Rule 10b5–1 plans, when designed and administered appropriately, can facilitate long-term interest alignment and other principles of good corporate governance. There are practices, however, that raise questions of interest alignment and fairness, including, in particular, issues that arise when plans are implemented, amended, or terminated and trading occurs (or does not occur) around those events. I believe that companies should strongly consider requiring all Rule 10b5–1 plans for senior executives and board members to include mandatory seasoning, or waiting periods after adoption, amendment, or termination before trading under the plan may begin or recommence. In my view, such seasoning periods are appropriate between the establishment of a plan and the date of the initial trade, as well as between any modification, suspension or termination of a plan and the resumption of trading or entry into a new plan. These seasoning periods not only help demonstrate that a plan was executed in good faith, but they also can bolster investor confidence in management teams and in markets generally.

In addition, many of my colleagues and I believe a well-designed insider trading policy should have controls in place to prevent senior executives and members of the board of directors from trading once a company is in possession of material nonpublic information, even if an individual officer or director did not personally have knowledge of the information. This includes the time period between the occurrence of an event and the required disclosure of the event to the public under Commission rules. In my view, such a policy is not difficult to adopt or administer, making the integrity bang for the compliance buck large. I also believe that our Forms 4 and 5 related to compliance with Section 16 of the Exchange Act should be modified so that disclosures of whether a transaction has been made pursuant to a Rule10b5–1 plan are made readily apparent. Adding a new box to these forms that would be required to be checked in these circumstances, which would be of little cost, would be sufficient, in my view, to achieve this objective.

Finally, I believe that companies should consider, in addition to their legal obligations, the wisdom of issuing stock options to its executives while in possession of material nonpublic information. Many equity compensation plans require stock options to be granted with strike prices that are no less than fair market value. Implicit in this structure is the premise that equity awards are intended to incent performance that will result in future increases in company value. When a company grants an award based on the trading price of the stock while the company is in possession of materially positive nonpublic information, this premise is diluted to the extent future increases in company stock value are attributable to the release of positive information rather than future performance. In addition, such a grant may not be consistent with the terms of the incentive plan approved by its shareholders. Similarly, such a grant may also be inconsistent with existing accounting standards because, in short, the trading price of its stock is not a good indicator of fair market value.

These are important corporate governance and policy considerations that I believe public companies and boards, as well as the Commission and Congress, should consider moving forward.

Regulation of Money Market Funds

Q.2. In March of this year, the financial markets seized up because cash was in high demand, and the dangers of the shadow banking system became evident, in particular the risk when money market funds face substantial redemptions.

You, Federal Reserve Vice Chair Randal Quarles, and Deputy Treasury Secretary Justin Muzinich have all commented that the money market fund reforms from the last crisis were not good enough.

What safeguards or requirements can the SEC put in place?

A.2. After closely examining the events in March, I believe that additional reforms are warranted to promote the orderly functioning of short-term funding markets, which is essential to the performance of the broader financial markets and our economy more generally. In particular, SEC staff is actively reexamining the Commission's prior reforms to money market funds in light of the market stresses caused by the COVID–19 pandemic and analyzing the performance of these funds over the recent period. This review is intended to provide a forward-looking assessment and consider reforms that, as much as possible, address vulnerabilities that have ultimately led the Federal Government to intervene twice within past 12 years to provide support. The Commission's Fall 2020 Regulatory Flexibility Act Agenda includes an item on reforms related to the regulation of money market funds.

The SEC is working closely with our domestic and international regulatory counterparts as part of this process. One element of this exercise that is noteworthy is ensuring that the various markets underlying money market funds (e.g., the Treasury market, municipal finance market, and commercial paper market) are examined separately and that any reforms reflect the differences in these markets. In addition, the President's Working Group on Financial Markets (PWG) recently issued a report on money market funds, which includes an overview of the market stress in March 2020 and a list of potential reform options for prime and tax-exempt money market funds.[1]

RESPONSES TO WRITTEN QUESTIONS OF SENATOR COTTON FROM JAY CLAYTON

Q.1. In your testimony, you stated that the SEC should not use ambiguity in the law to its advantage in an enforcement context. You observed that while the Share Class Selection Disclosure Initiative (SCSDI) was intended to efficiently correct a widespread practice that was inconsistent with the law, but also that industry members felt they were within the bounds of the law when the SEC felt they were not. You expressed the hope that more clarity has been brought to the issue, but if it has been, it was done through enforcement rather than through rulemaking. Why did the SEC not provide clear notice to the industry that this "widespread practice" was inconsistent with its interpretation of the law before beginning enforcement actions?

Q.2. Prior to the announcement of the SCSDI, what specific means did the SEC use to communicate to the industry that an investment advisors' duty of care and duty of candor required disclosing that the firm received 12b–1 fees; that cheaper shares of the same mutual fund were available to investors; and that purchasing fund shares that paid 12b–1 fees when cheaper share classes were available would adversely affect the client's return? Please reference the specific text announcing these elements of acceptable disclosures.

Q.3. What were the potential costs associated with providing the industry with the specific guidance necessary to comply with the SEC's disclosure expectations? By what means was it determined that these costs outweighed the benefits of providing the industry with the clarity necessary to comply?

[1] *https://home.treasury.gov/system/files/136/PWG-MMF-report-final-Dec-2020.pdf.*

Q.4. You noted that principles-based regulation relies on facts-and-circumstances based application, but you asserted that the SCSDI was based on investment advisors' duty of care and duty of candor, which are well-established principles of the Federal securities laws. If these disclosure requirements were so well established, how did almost 100 firms, or approximately 20 percent of dually registered firms (those registered as both an investment adviser and broker-dealer), miss them and why did the SEC allow that conduct to go on for over a decade before taking enforcement action?

A.1.–A.4. The Share Class Selection Disclosure Initiative (the Initiative) concerned advisers that directly or indirectly received 12b–1 fees in connection with recommending, purchasing, or holding 12b–1 fee paying share classes for its advisory clients without adequate disclosure, including disclosures that were inconsistent with the advisers' actual practices. This voluntary initiative provided eligible advisers with the opportunity to address issues with disclosures, make distributions to clients harmed by the firm's undisclosed conflicts, and to do so quickly, with less cost than a typical investigation and without a civil monetary penalty. After reviewing a self-reporting adviser's submission, the staff asked follow-up questions and determined whether it believed that the facts and circumstances merited recommending an enforcement action and, if so, the appropriate scope of any such recommendation. The Commission then considered the recommendations and determined whether to initiate proceedings against each firm.

The Commission's orders found that the investment advisers failed to adequately disclose conflicts of interest related to the sale of higher-cost mutual fund share classes when a lower-cost share class was available. Specifically, the Commission's orders found that the settling investment advisers placed their clients in mutual fund share classes that charged 12b–1 fee—which are recurring fees deducted from the fund's assets—when lower-cost share classes of the same fund were available to their clients without adequately disclosing that the higher cost share class would be selected. The 12b–1 fees were routinely paid to the investment advisers in their capacity as brokers, to their broker-dealer affiliates, or to their personnel who were also registered representatives, creating a conflict of interest with their clients, as the investment advisers stood to benefit from the clients' paying higher fees. Most of the advisory clients harmed by the disclosure practices were retail investors, and the Initiative helped to put money back into their hands and called for the advisers to take remedial steps.

The Initiative and related cases were based on well-established principles under the securities laws, which the Commission applied to the specific circumstances of each firm that chose voluntarily to participate in the Initiative. Passed by Congress in 1940, the Investment Advisers Act establishes a Federal fiduciary standard for investment advisers. For decades, it has been recognized that the fiduciary obligations of investment advisers include an obligation to eliminate or at least make full and fair disclosure to clients and prospective clients concerning their conflicts of interest, including conflicts arising from financial incentives, and to act in their clients' best interest. These fiduciary principles were confirmed by the

Supreme Court more than 50 years ago in *Capital Gains*[1] and are enforceable through the antifraud provisions of the Advisers Act.[2] Full and fair disclosures about conflicts and other material facts are necessary because they enable clients and potential clients, including retail investors, to make informed choices when deciding whether to hire or continue retaining an investment adviser.

In addition, Form ADV, which all registered advisers must file and which has been adopted and amended in Commission rulemakings after notice and comment, requires disclosure of conflicts that an adviser has or is reasonably likely to have. Form ADV specifically requires disclosure concerning the compensation and fees that advisers and their supervised persons receive, including from asset-based charges and other fees received in connection with client investments. In addition, Form ADV reminds advisers that, to satisfy their disclosure obligations as fiduciaries, they may need to disclose to their clients information about conflicts that is not specifically required by the Form.

The conduct that resulted in the mutual fund share class selection cases, including the cases brought through the Initiative, involved violations of these long-standing disclosure requirements and principles. Firms know or should know what compensation they receive and whether the circumstances under which they receive it create incentives that give rise to actual or potential conflicts of interest. The compensation at issue in these cases, 12b–1 fees and revenue sharing, gave rise to conflicts related to, for example, the types of investments, the fund families, the particular funds and the share classes of individual funds that the advisers recommended. For instance, when an adviser receives, directly or indirectly, 12b–1 fees in connection with mutual fund recommendations, it has a financial incentive to recommend that a client invest in a share class that pays 12b–1 fees. The resulting conflict of interest is especially pronounced when share classes of the same funds that do not bear these fees are available to the client.

There are more than 13,000 registered investment advisers, which offer a wide range of services and products through a variety of business models. Moreover, market practices evolve regularly, including with respect to compensation arrangements and fund sales practices more generally. The Advisers Act is, by design, a principles-based regime, which has helped enable it to provide robust investor protection while establishing a flexible framework that accommodates this variety and development. The Initiative and the cases that preceded the Initiative reflect a key fiduciary and investor protection principle that is well-established and well-understood by investment advisers—an adviser must provide full and fair disclosure of its conflicts of interest and other material facts and act in accord with its disclosures. Indeed, many investment advisers appear to have recognized the kinds of conflicts addressed in the Initiative and had previously responded through practices designed

[1] *SEC v. Capital Gains Research Bureau,* 375 U.S. 180 (1963).

[2] The Commission also discussed the application of this principle in the context of share class selection at least as early as 2006 in the matter of *IFG Network Securities,* stating that where the only bases for the difference in rate of return between mutual fund share classes are the cost structures of those share classes, information about the cost structure would be important to a reasonable investor.

to address them, including through elimination, disclosure or a combination of disclosure and mitigation.

The Commission will continue to look for opportunities to provide its views to market participants regarding their responsibilities, where needed and in an appropriate form. In a recent example, last year, the Commission published an interpretive release about the fiduciary duties of investment advisers to reaffirm, and in some instances clarify, certain aspects of the fiduciary duty that an investment adviser owes to its clients under the Advisers Act.

Q.5. You have observed that staff statements and documents do not have the force and effect of law (as only the Commission's rules and regulations do). Is Enforcement staff relying on other settled matters instead of litigated decisions as legal support for bringing subsequent enforcement actions? If so, is that appropriate given that settlements do not set legal precedent and your testimony that matters like these should be brought in administrative courts "cautiously, if at all."

A.5. Generally speaking, enforcement actions are not recommended solely on prior actions—whether settled or adjudicated. There is a basis in law for the alleged violation. However, staff may point to particular cases to illustrate the application of law to a set of facts and as evidence of how the Commission has viewed similar matters in the past.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR TILLIS FROM JAY CLAYTON

Q.1. A bill I was the original cosponsor of, S. 3795, the Registration for Index Linked Annuities Act of 2020, calls upon the SEC to streamline the registration process for Registered Indexed Linked Annuities (or RILAs) and improve access to this innovative retirement savings product. As you are likely aware, a RILA is an innovative product which allows investors a way to protect their investment savings from losses due to stock market volatility. This bill would require that a new form be designed to specifically register RILAs rather than continue to require the use of forms designed primarily for equity offerings, requiring the disclosure of extensive information that is not relevant to prospective annuity purchasers.

Would you commit to have your staff take a look at what's been proposed the Registered Index Linked Annuities Act to see if the actions called for in the legislation can be implemented by the Commission?

A.1. Indexed annuities, much like structured notes, provide a measure of the performance of a referenced instrument or index, and represent a direct obligation of the insurer. I appreciate the concern regarding registered indexed annuities as sales of this investment product have grown as an increasingly popular investment option for Main Street investors. I understand the concerns expressed by the sponsors of the legislation and recognize that the general registration form currently used to register these products is not tailored to their unique features and risks, and requires some disclosure that may not be material to investors in these products. Further, I understand the concerns that because registered indexed annuities are issued through an insurer's general account, rather than a separate account that is registered as an investment company, the registration form for variable annuities (which are issued by registered separate accounts) is not well-suited either.

SEC staff have been in dialogue with market participants on this issue and recently met with representatives of insurance industry trade groups and issuers of registered indexed-linked annuities to discuss the challenges in applying the requirements of the current registration forms to these products, as well as the potential for developing a more tailored form. As staff continues to consider options for a more tailored form for specific types of registered annuities, I expect the dialogue with market participants to continue. Staff has also provided technical assistance to Congress on the legislation and will be available to provide further assistance as requested.

Q.2. I have been interested in the issue of margin eligibility for over-the-counter securities that have similar liquidity and trading characteristics as those traded on exchanges. As you know, holders of marginable securities can borrow against them, which increases the utility of owning those securities, improves market quality and increases the value for investors.

- Should holders of over-the-counter American Depositary Receipts (ADRs) that have similar trading and liquidity characteristics as ADRs traded on exchanges be margin eligible?
- Wouldn't it make sense for margin eligibility to be the same for exchange-traded ADRs and over-the-counter ADRs if they have similar trading, liquidity, disclosure and other requirements?

A.2. Margin requirements for customers of broker-dealers are primarily governed by the Federal Reserve Board's Regulation T and self-regulatory organization (SRO) margin rules, such as FINRA Rule 4210. Regulation T covers initial margin requirements and specifies which types of securities are margin eligible. There are about 2,260 ADRs trading in the United States, of which some 360 are listed. U.S.-listed ADRs are considered margin securities under Regulation T, and therefore, margin eligible. Over-the-counter ADRs are generally not margin eligible under Regulation T. SROs set margin requirements (including maintenance margin requirements) for securities through proposed rule changes filed with the Commission for notice, public comment and Commission approval prior to implementation.

It may be challenging initially to determine whether a particular over-the-counter ADR has similar trading, liquidity, disclosure and other requirements as listed ADRs for purposes of determining margin eligibility. Moreover, this determination would need to be made on a periodic basis. However, I believe it is worth considering whether Regulation T should be amended to expand the definition of margin security to include those over-the-counter ADRs where the underlying are securities which have been deemed to be marginable under Regulation T. To that end, SEC staff are engaged with staff at the Federal Reserve Board and discussing potential updates to the scope of Regulation T that will modernize the rule while maintaining important investor protections.

Q.3. I commend the SEC for recently adopting amendments to Exchange Act Rule 15c2–11, which is part of the over-the-counter market regulatory structure.

Is the SEC prepared to grant exemptions to Rule 15c2–11 that would protect the substantial value of the nearly 2,000 Level 1 ADRs currently held by U.S. investors, and to allow U.S. investors continued access to these important investment opportunities?

A.3. In adopting the amendments, the Commission solicited and considered comments from market participants, including comments from persons concerned that certain securities may be adversely affected by the amendments. Further, in its adopting release, the Commission acknowledged that market participants may have unique facts and circumstances as to how the amended Rule affects their activities. Thus, in the adopting release, the Commission stated that it will consider any requests from market participants—including from those engaged in transactions related to ADRs—for exemptive relief from the amended Rule for OTC securities that may be affected by the amendments to the Rule. In considering whether an exemption from the Rule is necessary or appropriate and in the public interest and is consistent with the protection of investors, the Commission may consider a number of factors, such as whether, based on data or other facts and circumstances, the issuers and/or securities are less susceptible to fraud or manipulation.

The Commission also stated it may consider, among other things: (1) securities that have an established prior history of regular quoting and trading activity; (2) issuers that do not have an adverse regulatory history; (3) issuers that have complied with any applicable State or local disclosure regulations that require that the issuer provide its financial information to its shareholders on a regular basis, such as annually; (4) issuers that have complied with any tax obligations as of the most recent tax year; (5) issuers that have recently made material disclosures as part of a reverse merger; or (6) facts and circumstances that present other features that are consistent with the goals of the amended Rule of enhancing protections for investors, particularly retail investors.

The Commission encouraged any requests for exemptive relief to be submitted expeditiously during the 9-month transition period to avert potential interruptions in quotations in such securities that may occur on or after implementation. Market participants that may be concerned about such ADRs may want to consider contacting Commission staff for further assistance regarding potential requests for exemptive relief.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR KENNEDY FROM JAY CLAYTON

NRSROs

Q.1. Given that the SEC has not recommended a new model for NSROs and other CRAs since Dodd-Frank became law more than 9 years ago, why has the SEC not implemented an independent board as prescribed by the Dodd-Frank Act's adoption of the bipartisan Franken-Wicker Amendment?

Q.2. The makeup of the Board, as written in the Franken-Wicker Amendment, leaves much of the structure up to the SEC. Are there certain technicalities that could be adjusted as written in the Franken-Wicker Amendment, which would make the Commission more likely to institute an independent board?

Q.3. Are there concrete findings made by the Commission that shows that an independent board would not curb inflated ratings?

A.1.–A.3. NRSROs play a significant role in our domestic and international credit markets. Many institutional and retail investors rely, to varying extents, on NRSRO ratings and other services in making issuer-specific and more portfolio-oriented investment decisions. I take seriously the Commission's role in overseeing NRSROs and other third-party market participants on whom investors rely, such as investment advisers, proxy advisory firms, auditors, and research analysts.

As a general matter, during this time of broad economic stress during the COVID–19 pandemic, there is a renewed regulatory interest in the influence of credit rating agencies on market structure and market function. Before the recent economic events, I suggested a few areas of focus for the Commission's Investor Advisory Committee, including: (1) how much retail investors rely on credit rating agencies; and (2) how much ratings influence today's marketplace, such as the potential risks and downstream effects of investment strategies and mandates that reference ratings. This topic is even more important now, and SEC staff, in coordination with our international regulatory counterparts, is analyzing the potential risks and downstream effects of investment strategies and mandates that mechanically react to credit ratings, directly or through index tracking. In addition, Commission staff are exploring whether credit ratings actions may contribute to procyclicality and have implications for financial stability.[1] My view is we must continue to strive to advance the statutory goals of fostering accountability, transparency and competition and disclosing and mitigating potential conflicts of interest, without diminishing the marketwide benefits of, but also recognizing the inherent risks and limitations of unchecked reliance on, the credit rating services currently provided.

With respect to compensation models, I share your concerns about conflicts of interest in the rating agency compensation models. By way of background, the "issuer-pays" business model—in which the issuer pays for the services of the rating agency in providing the ratings—is the dominant business model among the NRSROs. Prior to 1970, an alternative business model, the "subscriber-pays" model, dominated the ratings space. Under this model, investors are charged for ratings by paying the rating agency a subscription fee to access ratings, and issuers receive their own ratings without charge. The Commission's Office of Credit Ratings (OCR) has noted the potential conflicts inherent in both busi-

[1] See *Credit Ratings, Procyclicality and Related Financial Stability Issues: Select Observations* (July 15, 2020) available at *https://www.sec.gov/news/public-statement/covid-19-monitoring-group-2020-07-15.*

ness models.[2] With respect to the issuer-pays model, OCR has noted potential conflicts in that the NRSRO may be influenced to determine more favorable (i.e., higher) ratings than warranted in order to retain the obligors or issuers as clients. Similarly, OCR has noted that the subscriber-pays model may also be subject to potential conflicts of interest, including where an NRSRO may be aware that an influential subscriber holds a securities position (long or short) that could be advantaged if a credit rating upgrade or downgrade causes the market value of the security to increase or decrease or if an NRSRO may be aware that a subscriber wishes to acquire a particular security but is prevented from doing so because the credit rating of the security is lower than internal investment guidelines or an applicable contract permit.

I believe a new approach to addressing conflicts may be needed. In this regard, I note that our staff is assessing the recent recommendation from the Commission's Fixed Income Market Advisory Committee (FIMSAC) regarding ways to mitigate some of the perceived potential conflicts of interest associated with the issuer-pay model. The FIMSAC recommended that the Commission explore the following three elements to mitigate potential conflicts: (1) increased NRSRO disclosure; (2) enhanced issuer disclosures for corporate credit issuers and securitized products; and (3) a mechanism for bondholders to vote on the issuer-selected NRSROs.[3]

The Franken-Wicker Amendment to the Dodd-Frank Act contemplated the adoption of an independent ratings board in which a board would assign qualified NRSROs to rate structured finance products. In 2012, SEC staff submitted a report to Congress on assigned credit ratings that includes a detailed analysis of the potential benefits of the independent board. This report also raised a number concerns including: (1) the continuance of ratings shopping under the assignment system; (2) the potential for new conflicts of interest and incentives that run contrary to the goal of ratings quality; (3) the challenges related to operational feasibility such as uncertainty and cost to the market; (4) how to determine whether a qualified NRSRO has the capacity and expertise to produce quality credit ratings for particular types of securities; and (5) whether the assignment system creates a Government endorsement which would be inconsistent with efforts to reduce reliance on credit ratings.[4] I believe, as highlighted in the 2012 Report, that these serious concerns must be thoughtfully considered and resolved before moving forward with the establishment of such a board. The 2012 Report also includes recommendations for statutory changes that would be required for the establishment of such a board.

China

Two years ago, the Commission worked with the Committee on Foreign Investment in the United States (CFIUS) in deciding to block the sale of the Chicago Stock Exchange to a group of Chinese-

[2] See Annual Report on Nationally Recognized Statistical Rating Organizations (Jan. 2020), available at *https://www.sec.gov/files/2019-annual-report-on-nrsros.pdf.*

[3] FIMSAC Recommendation Regarding Ways to Mitigate Conflicts of Interest in Credit Ratings (Jun. 1, 2020), available at: *https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendations-credit-ratings-subcommittee.pdf.*

[4] See Report to Congress on Assigned Credit Ratings (Dec. 2012), available at *https://www.sec.gov/news/studies/2012/assigned-credit-ratings-study.pdf.*

led investors. The Commission said at the time that it was concerned about the ability of a new, foreign owner to "effectively monitor or enforce compliance," and there were also significant concerns about how American's personal information would have been protected if the sale had been approved. Many Americans participating in investing for the first time are doing so through companies and phone applications designed, owned, and operated in some of the same countries that will not comply with PCAOB audit requirements—specifically, Chinese platforms like Webull (which has ties to Xiaomi Technology) and Moomoo (which has ties to Tencent).

Q.4. Do American investors using these platforms benefit from the full range of regulatory protections and assurances that they would if using a U.S.-owned and -operated platform?

Q.5. Is the SEC concerned that American retail investors who use these foreign trading platforms could face uncertainties due to any change in the People's Republic of China's regulatory regime?

A.4.–A.5. From a U.S.-regulatory perspective, the protections that govern the operation of U.S. broker-dealers and SEC-registered investment advisers apply and, as a general matter, should not be affected by the ownership of that broker-dealer or the regulatory regime of other countries. The platforms you referenced, Webull Advisors LLC and Moomoo (whose securities products and services are offered by Futu, Inc.), are registered with the SEC, FINRA, and SIPC. These firms must comply with all capital, market and investor protection rules with respect to their business in the United States.

That said, registration and oversight as a broker-dealer or investment adviser does not insulate obligations of individuals or firms with respect to customer information. I have requested that our Division of Examinations consider these issue in connection with their examinations of investment advisers and broker-dealers, including any concerns raised by a lack of transparency in firm ownership.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CRAMER FROM JAY CLAYTON

Q.1. Mr. Chairman, I have been following the proposed changes to the 13F reporting that would raise the threshold for filing for institutional investment managers from $100 million to $3.5 billion. I have heard opposition to this from various stakeholders due to the reduction in transparency around holdings. In fact, it is my understanding that 99 percent of the comment letters filed with the SEC were opposed to the proposed changes. Can you tell me what the status of the proposal is? Do you expect the SEC to withdraw this proposal given the overwhelming opposition to it?

A.1. The Commission proposed to raise the reporting threshold to $3.5 billion, reflecting proportionally the same market value of U.S. equities that $100 million represented in 1975, the time that Congress enacted section 13(f) under the Exchange Act. The legislative history of the 1975 statute indicates that the reporting threshold of $100 million was intended to capture the largest institutional managers. The proposed adjusted threshold would provide relief to smaller managers who are now subject to Form 13F reporting, while retaining data on over 90 percent of the dollar value of the securities currently reported.

The Commission's proposal included numerous requests for comment, including on the proposed threshold increase and alternative approaches analyzed in the release. The Commission has received over 2,000 comment letters on the proposal to date from a broad range of interested parties, the vast majority of which addressed the increase in the reporting threshold. Many expressed one of two concerns: (1) the potential impact of the proposal on the ability of publicly traded companies to engage with their shareholders, and (2) the desire not to lose insight into certain individual firm trading information. Notably, there was little concern that the proposed amendments would affect the objections of section 13(f).

As I noted during the hearing, I do not plan to finalize the Form 13F proposal by the end of the year. The Form 13F proposal was intended to modernize the threshold, but in the process, commenters highlighted that the uses of Form 13F have evolved beyond its intended purpose since the statute was enacted. For example, public companies are using the data to identify and engage with certain of their shareholders on corporate governance issues. We appreciate the desire of issuers to have transparency into their institutional shareholder base or ensure that they are able to efficiently reach their shareholders even if the shareholders wish to remain anonymous. We are exploring ways to modernize our rules on shareholder communications so that issuers can engage with their shareholders more directly and efficiently. Currently, however, information reported on Form 13F appears to fill a gap—a gap I believe can be filled much more effectively and efficiently through other means—in providing this information to corporate issuers.

In addition, commenters stated that corporate issuers may use Form 13F data to identify potential new investors based on whether an investor's historical Form 13F disclosures show holdings of similar issuers or reveal a relevant investment strategy. Similarly, institutions seeking to hire money managers asserted that they use 13F data to identify smaller managers with attractive holdings and strategies. Form 13F data may be particularly useful here because smaller managers oftentimes are not able to engage in widespread marketing efforts. However, 13F filings are an imperfect means to understand how a professional manager manages portfolios. Form 13F can be filed up to 45 days after quarter end and is a backward-looking snapshot of a manager's holdings. Also, the filing only requires disclosure of certain equity securities, and does not necessarily include all of a manager's investments.

These and other issues raised by commenters require careful consideration by the staff, and the involvement of multiple divisions and offices within the Commission. We are focused on examining these important issues before moving forward with determining the appropriate threshold for the Form.

Q.2. Chairman Clayton, over 90 percent of American adults use the internet, almost 89 percent file their Federal taxes electronically, and most clients of financial firms prefer electronic delivery for investor communications. You've spoken about the importance of modernizing the delivery of investor communications, especially in the midst of the COVID–19 pandemic. Could you provide clarity on how you think this could best be achieved, while preserving a paper option for those who prefer it? Will the SEC act on this initiative in the near-term?

A.2. The shift to a mandatory telework environment across our entire economy, including our critical market infrastructure, showed the importance of being able to conduct business electronically and remotely and highlighted the need to move our regulatory framework for all investors to an electronic framework, while preserving a paper delivery option for those who prefer it.

At the outset of the pandemic, the Commission and its staff provided temporary relief to address operational issues arising from COVID–19, including relief from in-person meeting, manual signature and physical document-delivery requirements. I believe in many instances, this relief enhanced investor protection and market integrity, and staff are currently assessing areas where permanent relief makes sense. In November 2020, the Commission adopted rules that will provide additional flexibility in connection with documents filed with the Commission to permit the use of electronic signatures in authentication documents and facilitate electronic service and filing in SEC administrative proceedings. Additionally, the Commission's Fall 2020 Regulatory Flexibility Act Agenda contains several items building on the SEC's COVID–19 relief.

Q.3. I'm concerned that Troubled Debt Restructuring (TDR) guidance will soon expire. Is the SEC aware of this concern and are you working with FASB to ensure existing regulatory guidance on TDRs continue?

- What is the timeline for additional TDR guidance?
- Is there any opposition to extending TDR relief?
- In your view, do you and other Federal agencies have the authority to extend TDR relief? Does Congress need to act?

A.3. Since the onset of the pandemic, the SEC staff has been actively engaged with stakeholders relating to the application of the TDR guidance. SEC staff have worked closely with the Financial Accounting Standards Board (FASB) on TDR guidance, and this collaborative approach will continue.

On March 22, 2020, the prudential banking regulators, working together with the FASB, issued an interagency statement on loan modifications for financial institutions working with customers affected by COVID–19. The interagency statement covered different relevant topics and specifically provided that short-term modifications made on a good faith basis in response to COVID–19 to borrowers who were current prior to any relief are not TDRs. This interagency guidance did not include an expiration date.[1]

[1] Subsequent to the issuance of this guidance by the FASB and the banking regulators, the CARES Act was signed into law. Section 4013 of the CARES Act provided eligible institutions to suspend U.S. GAAP TDR requirements for certain loan modifications meeting the criteria in the CARES Act. The interagency statement and the provisions of the CARES Act are similar; however, unlike the guidance published by the banking regulators, the CARES Act provisions included an expiration date.

SEC staff have been in ongoing dialogue with the FASB, banking regulators, financial institutions, and banking industry groups to understand any challenges relating to the accounting for loan modifications. While certain institution-specific application questions have arisen, because the guidance from the banking regulators and the FASB does not include an expiration date, we believe market participants have clarity on the approach they should utilize to account for loan modifications. To the extent specific questions continue to arise regarding the application and scope of this guidance related to TDRs, I believe that the FASB is well positioned to act. The SEC's Office of the Chief Accountant also stands ready to assist, and I would encourage stakeholders to consult with them on any specific issues they may have.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM JAY CLAYTON

Coronavirus Disease 2019 (COVID–19)

Q.1. Last month, I sent a letter to you and Commodities Futures Trading Commission (CFTC) Chairman and Chief Executive Tarbert urging the SEC and CFTC to conduct an insider trading investigation following press reports revealing that Trump administration officials privately gave dire warnings to conservative allies and Republican donors about the risk from the COVID–19 pandemic while President Trump was publicly optimistic about the impact of the virus.[1]

The letter cites news reports showing that senior Trump administration officials indicated that certain investors should "[s]hort everything . . . betting on the idea that the stock prices of companies would soon fall" and that "aspects of the readout from Washington informed their trading that week, in one case adding to existing short positions in a way that amplified . . . profits."[2] My letter stated that "Federal law bars individuals from 'purchasing or selling a security while in possession of material nonpublic information'—in this case, high-level Administration officials' dire views of the economic risks from the coronavirus that were in stark contrast to the public statements of the President and other top officials."[3]

Please describe any action that the SEC has taken in response to these or other reports or indications of insider trading related to the COVID–19 pandemic.

A.1. As a matter of policy, the SEC conducts investigations on a confidential basis and generally does not acknowledge the existence or nonexistence of any investigation unless or until charges are filed. Accordingly, I cannot comment specifically on the matters you

[1] Letter from Senator Warren to Securities and Exchange Commission Chairman Clayton and Commodities Futures Trading Commission Chairman and Chief Executive Tarbert, October 15, 2020, *https://www.warren.senate.gov/imo/media/doc/2020.10.15%20Letter%20to%20SEC%20CFTC.pdf.*

[2] *New York Times,* "As Virus Spread, Reports of Trump Administration's Private Briefings Fueled Sell-Off", Kate Kelly and Mark Mazzetti, October 26, 2020, *https://www.nytimes.com/2020/10/14/us/politics/stock-market-coronavirus-trump.html.*

[3] Letter from Senator Warren to Securities and Exchange Commission Chairman Clayton and Commodities Futures Trading Commission Chairman and Chief Executive Tarbert, October 15, 2020, *https://www.warren.senate.gov/imo/media/doc/2020.10.15%20Letter%20to%20SEC%20CFTC.pdf.*

have cited as they relate to any specific entity or person, but I assure you that the SEC's staff will consider carefully the information included in your previous correspondence in connection with our statutory and regulatory responsibilities.

I also note that we are generally aware of the information asymmetries and other consequences of COVID–19 that may implicate our Federal securities laws, have publicly commented on these matters and are incorporating this into our day-to-day operations. For example, early on in the pandemic, the Co-Directors of the Division of Enforcement released a statement reminding market participants of the importance of maintaining market integrity and following corporate controls and procedures, especially during times of market volatility. Good corporate hygiene cannot be overstated, nor can the importance of related controls designed to prevent not only insider trading, but also the appearance of impropriety or misalignment of interests. Following this theme, in September, in a letter to the House Financial Services Committee, I provided a series of specific suggestions regarding corporate hygiene—including the use of Rule 10b5–1 plans—that I believe companies should follow and that could be the basis of legislation or future rulemaking.

Private Equity

Q.2. Last year, I introduced S. 2155, the Stop Wall Street Looting Act of 2019, to reform the private equity industry and end abusive leveraged buyouts.[4]

Private equity transactions are fueled by risky loans that are immediately securitized and sold.[5] A provision in my bill would help protect the economy from risks stemming from excessive debt imposed on private equity firms' target companies. It would require arrangers of corporate loan securitizations to retain risk by clarifying that managers of collateralized debt obligations are subject to risk retention requirements established in the Dodd-Frank Wall Street Reform and Consumer Protection Act.[6]

Do you believe that arrangers of corporate loan securitizations should retain risk to prevent dangerous loans from being immediately passed onto unknowing investors?

If not, how, if at all, you would you mitigate risky corporate lending and the ability of lenders to spread irresponsible private equity debt across financial institutions? How would you ensure that regulators have the appropriate information to assess the exposure of financial markets to leveraged loans?

A.2. Loan securitization vehicles are typically sold under an exemption from registration under the Securities Act of 1933. As a result, limited information is made available to the SEC regarding these offerings, though consistent with the exemption on which these vehicles rely, the purchasers of interests in these vehicles are

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[4] Office of Senator Warren, "Warren, Baldwin, Brown, Pocan, Jayapal, Colleagues Unveil Bold Legislation to Fundamentally Reform the Private Equity Industry", July 18, 2019, *https://www.warren.senate.gov/newsroom/press-releases/warren-baldwin-brown-pocan-jayapal-colleagues-unveil-bold-legislation-to-fundamentally reform-the-private-equity-industry.*

[5] *Washington Post,* "The Shadow Banks Are Back With Another Big Bad Credit Bubble", Steven Pearlstein, May 31, 2019, *https://www.washingtonpost.com/business/economy/the-shadow-banks-are-back-with-another-big-bad-credit-bubble/2019/05/31/a05184de-817a-11e9-95a9-e2c830afe24f__story.html.*

[6] Securities and Exchange Commission, "Asset-Backed Securities", October 23, 2014, *https://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtml.*

typically institutional investors. SEC staff have coordinated with domestic and international financial regulators on work to explore and monitor the leveraged loan market and CLO markets. SEC staff also continue to monitor these markets using publicly available data, commercially available data and data reported to the SEC, though as a consequence of the variety of purchasers in these markets, no single data set contains comprehensive information concerning the owners of leveraged loans and CLOs. For example, as part of the SEC staff report *U.S. Credit Markets: Interconnectedness and the Effects of the COVID–19 Economic Shock,* staff reviewed how the leveraged loan and CLO markets functioned in March 2020 in response to both the COVID–19 induced economic shock and the related monetary and fiscal policy responses. As discussed in more detail below, I do not believe leveraged lending presents significant risks to financial stability at this time. As noted in a December 2020 GAO report, "leveraged lending activities had not contributed significantly to the distress of any large financial entity whose failure could threaten financial stability. Large banks' strong capital positions have allowed them to manage their leveraged lending exposures, and the exposure of insurers and other investors also appeared manageable."[7] The SEC will continue to monitor the CLO market in coordination with our domestic and international regulatory counterparts.

Leveraged Lending

Q.3. In November 2018, I sent a letter to you, Treasury Secretary Steven Mnuchin, Federal Reserve Chairman Jerome Powell, then-Comptroller of the Currency Joseph Otting, and Federal Deposit Insurance Corporation Chairman Jelena McWilliams expressing concern about the rapid growth of leveraged corporate lending, or lending to companies that are already highly indebted.[8]

In a section addressed to you, I stated that the Volcker Rule is intended to restrict bank involvement with external funds and that trade associations have asked the SEC to significantly loosen Volcker Rule controls. The SEC completed its rollbacks of the Volcker Rule in September 2019, which you strongly supported.[9] In response to the rollback of the Volcker Rule, SEC Commissioner Robert J. Jackson, Jr., stated, "'[r]olling back the Volcker Rule while failing to address pay practices that allow bankers to profit

[7] See Government Accountability Office, Financial Stability: Agencies Have Not Found Leveraged Lending to Significantly Threaten Stability but Remain Cautious Amid Pandemic (Dec. 16, 2020), available at *https://www.gao.gov/assets/720/711293.pdf.*

[8] Letter from Senator Warren to Treasury Secretary Steven Mnuchin, Federal Reserve Chairman Jerome Powell, Comptroller of the Currency Joseph Otting, Securities and Exchange Commission Chairman Jay Clayton, and Federal Deposit Insurance Corporation Chairman Jelena McWilliams, November 14, 2018, *https://www.warren.senate.gov/imo/media/doc/2018.11.14%20Lette%20to%20Regulator; https://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtmls%20on%20Leveraged%20Lending.pdf.*

[9] U.S. Securities and Exchange Commission, "Statement on Volcker Rule Amendments", Public Statement by Commissioner Robert J. Jackson Jr., September 19, 2019, *https://www.sec.gov/news/public-statement/statement-jackson-091919;* U.S. Securities and Exchange Commission, "SEC Adopts New Rules and Amendments Under Title VII of Dodd-Frank", press release, September 19, 2019, *https://www.sec.gov/news/press-release/2019-182.*

from proprietary trading puts American investors, taxpayers, and markets at risk.' "[10]

Your January response provided a procedural, but not a substantive, explanation of the status of SEC's proposed amendments to the Volcker Rule.[11]

Do you view leveraged lending as a risk? If so, what actions should the SEC take to mitigate the risks associated with leveraged lending?

A.3. Leveraged loans account for a relatively small portion of total debt outstanding in U.S. markets. Nonetheless, leveraged loan and collateralized loan obligation (CLO) markets have connections across a wide range of participants in U.S. capital markets. The market for CLOs has grown rapidly in recent years, with the market more than doubling since 2012, from $250 billion to $642 billion. Because these markets provide insight into market function and have the potential to contribute to certain market stresses, we have been following the CLO market and the leveraged lending and high-yield debt markets with increased attention since 2018. At that time, I asked SEC staff, including our Division of Economic and Risk Analysis and our Office of Credit Ratings, to review and closely monitor these markets with two issues in mind: (1) whether there are elements of these markets that could have systemic or other spill-over effects in our capital markets and in particular, undetected potential effects; and (2) whether these markets, and in particular CLOs, are structured in a way, such that changes in ratings of the securities could trigger substantial selling into markets (e.g., below investment grade markets) that historically have less liquidity.

CLO issuance in the United States was at an all-time high before the COVID–19 economic shock to the global financial system. As part of the SEC staff report *U.S. Credit Markets: Interconnectedness and the Effects of the COVID–19 Economic Shock,* staff reviewed how the leveraged loan and CLO markets functioned in March 2020 in response to both the COVID–19 induced economic shock and the related monetary and fiscal policy responses. The onset of the COVID–19 economic shock and its widespread impact on a large number of borrowers had a pronounced effect on the leveraged loan market, but despite a sharp initial decline in March 2020, the market has since stabilized. The COVID–19 economic shock to date has not appeared to significantly impair the CLO market. Risk to the financial system more generally appears to be mitigated as a result of various factors, including because of the diverse set of investors and numerous intermediators that are active in the CLO market, and as a general matter, CLO structures have features designed to match funding and absorb risk. As noted in a December 2020 GAO report, "leveraged lending activities had not contributed significantly to the distress of any large financial entity whose failure could threaten financial stability. Large banks' strong capital positions have allowed them to manage their lever-

[10] U.S. Securities and Exchange Commission, "Statement on Volcker Rule Amendments", Public Statement by Commissioner Robert J. Jackson Jr., September 19, 2019, *https://www.sec.gov/news/public-statement/statement-jackson-091919.*

[11] Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, January 31, 2019.

aged lending exposures, and the exposure of insurers and other investors also appeared manageable." Additionally, present-day CLO securities appear to pose less of a risk to financial stability than did similar securities during the financial crisis, as they have better investor protections, are more insulated from market swings and are not widely tied to other risky, complex instruments.[12]

I do not believe leveraged lending presents significant threats to financial stability. However, while these markets have fared reasonably well thus far with the disruption brought on by the COVID–19 economic shock, there is a heightened level of uncertainty in the leveraged loan and CLO markets.[13] The SEC staff will continue to monitor the CLO market in coordination with our domestic and international regulatory counterparts.

Q.4. Please explain the SEC's rationale for removing protections against excessive risks under the Volcker Rule.

A.4. The Volcker Rule was intended to constrain proprietary risk-taking by banking entities and promote the safety and soundness of the U.S. financial system. The Volcker Rule generally prohibits banking entities from engaging in proprietary trading and from owning or controlling hedge funds or private equity funds, referred to as "covered funds." It is intended to restrict high-risk, speculative trading activity by banking entities, while preserving their ability to engage in important customer-oriented financial services, such as underwriting, market making and asset management services. That mandate is straightforward in concept, yet in our multifaceted, highly interconnected, global and ever-changing financial markets, it is challenging to design a rule that effectively and efficiently implements this statutory mandate.

Since my response to your November 2018 letter, the agencies responsible for implementing the Volcker Rule adopted three sets of changes to the original rule: (1) amendments to implement congressional directives consistent with the Economic Growth, Regulatory Relief, and Consumer Protection Act (July 2019); (2) amendments to tailor and simplify the rule to allow banking entities to more efficiently provide financial services in a manner that is consistent with the requirements of the statute (November 2019); and (3) amendments modifying and clarifying requirements relating to covered funds (July 2020). I believe that, collectively, these amendments will improve application of the Volcker Rule in a number of respects. The November 2019 amendments will improve application, in part by: (1) tailoring compliance requirements more directly to a firm's trading activity; (2) providing greater clarity and certainty about what activities are prohibited; and (3) improving effective allocation of compliance resources where possible. The 2020 amendments similarly will improve application in part by: (1) reducing the extraterritorial impact of the regulations; (2) improving and streamlining the covered fund provisions; and (3) providing

[12] See Government Accountability Office, Financial Stability: Agencies Have Not Found Leveraged Lending to Significantly Threaten Stability but Remain Cautious Amid Pandemic (Dec. 16, 2020), available at *https://www.gao.gov/assets/720/711293.pdf.*

[13] As noted in FSOC's most recent annual report, with cash-flows impaired due to the COVID–19 pandemic, many businesses may be challenged to service their debt. Since March, nearly $2 trillion in nonfinancial corporate debt has been downgraded, and default rates on leveraged loans and corporate bonds have increased considerably.

clarity to banking entities regarding the provision of financial services and the conduct of permissible activities. These amendments are consistent with the requirements of Section 13 of the Bank Holding Company Act and are unlikely to materially increase risks to the safety and soundness of banking entities or the financial system.

Additionally, these amendments reflect the experience gained by banking entities and the agencies charged with implementing the Volcker Rule, including through examinations. Based on that experience, and in response to feedback received in the course of administering the rule, we and the other agencies identified opportunities—consistent with the statute—for improving the regulations. In the November 2019 amendments, that improvement included tailoring implementation based on the level of a banking entity's trading activity and recognizing, in short, that to implement the Volcker Rule effectively, one size does not fit all, and the terms of the regulations should reflect our collective experience. Similarly, the 2020 amendments will improve the regulations, in part, by excluding from the "covered fund" definition certain types of investment vehicles that do not present the risks that the Volcker Rule was intended to address.

In short, the Volcker Rule is now better implemented to achieve its objectives and ensure that it does not unduly constrain liquidity and capital formation.

Q.5. Commissioner Jackson also stated, "The Commission has justified the rollback of the significant investor—and taxpayer—protections in the Volcker Rule in the name of needed improvements in 'liquidity and capital formation.' Because the facts and our own Staff's analysis offer no meaningful evidence that the Volcker Rule has affected either, I respectfully dissent."[14]

- Please describe any evidence that the amendments rolling back the Volcker Rule are beneficial to the safety and security of securities markets.
- Please provide any specific analyses indicating that rolling back the Volcker Rule has improved liquidity and capital formation.

A.5. As part of the process of adopting the amendments to the Volcker Rule in both November 2019 and July 2020, the Commission conducted an economic analysis focused on the potential effects of these amendments on Commission registrants, the functioning and efficiency of the securities markets, investor protection, and capital formation and was informed by comments received on the original regulations implementing the Volcker Rule in 2013.

With respect to the 2019 Volcker amendments, the economic analysis was informed by a body of academic research concerning the effects of Section 13 of the Bank Holding Company Act and the original Volcker Rule on dealer provision of liquidity and on the risk of market dislocations in times of stress. In particular, those comments and research focused on: (1) the effects of the rule on risk-taking by banking entities; (2) the degree to which the rule may have impacted conflicts of interests between banking entities

[14] Id.

and their clients, counterparties, and customers; (3) effects of the rule on client-oriented financial services and market quality; and (4) compliance burdens and competitive effects. With respect to liquidity and capital formation, the Commission's economic analysis referenced several studies that show significant declines in various measures of liquidity after the financial crisis and postcrisis reforms, including a recent study that ties these effects to the Volcker Rule's underwriting exemption. In addition, the Commission's economic analysis also analyzed other costs and benefits of the rule, including its effects on risk-taking, noting, in relevant part, that while the Volcker Rule may have reduced exposure related to trading, it is not clear it reduced the overall risk of individual banking entities and potentially of banking entities as a whole. Former Commissioner Jackson did not address these matters in meaningful detail in the comments you cite.

I note that the bodies of studies in this area can generally be classified as ranging from limited or no evidence of adverse effects on liquidity and capital formation to significant adverse effects on one or both of these important Commission objectives. Through the great work of the staff, we have advanced these issues without adversely affecting (and I believe, furthering the risk-mitigating objectives) of the Volcker Rule.

With respect to the 2020 Volcker amendments, the Commission's economic analysis acknowledged that these amendments could increase the ability of banking entities to engage in certain types of activities involving risk, and, in the abstract, increases in risk exposures of large groups of banking entities could have negative effects. The analysis highlighted three important considerations that could mitigate those possible risks, including: (1) banking entities already engage in a variety of permissible activities involving risk and the activities of many types of funds excluded from the "covered fund" definition under the 2020 amendments largely replicate permissible and traditional activities of banking entities; (2) banking entities may also be subject to multiple prudential capital, margin and liquidity requirements that facilitate the safety and soundness of banking entities and promote financial stability; and (3) the new exclusions from the "covered fund" definition each include a number of conditions aimed at preventing evasion Volcker Rule, promoting safety and soundness, and allowing for customer oriented financial services provided on arms-length, market terms. I believe these considerations will effectively mitigate any such risk exposures.

Inflated Bond Ratings

Q.6. In September, I wrote you a letter regarding troubling reports of inflated bond ratings and the perverse incentives within the bond rating industry and urged the SEC to take immediate action to protect the economy from risky lending propped up by conflicts of interest between bond issuers and rating agencies.

My letter described the flows in the incentive structures of bond ratings firms' through the "issuer-pays" model used by major firms like S&P and Moody's. Under the issuer-pays model, bond issuers pay the agencies for their assessments of the products they hope to sell, ultimately giving the rating firms an incentive to give better ratings, regardless of the risk, since bond issuers might otherwise go to their competitors.[15] In your November response, you stated that you shared my concerns about conflicts of interest in rating agency compensation models and said that you are awaiting recommendations or advice from various advisory committees.[16]

- What is the current status of these recommendations?
- Have senior officials the SEC instructed the advisory committees that the SEC is consulting for recommendations or advice on the role and activities of bond rating agencies to produce any work products by a certain date or timeline? If so, please explain the SEC's instructions and any requested deadlines. Additionally, please explain if these recommendations or advice will be made public.
- Please describe any updates from the advisory committees that the SEC is consulting for recommendations or advice regarding the role and activities of bond rating agencies. Please describe any communications you, or senior SEC staff, have had with these advisory committees regarding any anticipated timelines or deadlines for their conclusions.

A.6. In my November 2019 remarks to the Fixed Income Market Structure Advisory Committee (FIMSAC), I noted the importance of continually reviewing whether market participants who substantially influence or are relied upon by investors are appropriately disclosing, monitoring, and managing their conflicts.[17] In my view, the interests of credit rating agencies are not fully aligned with that of investors, and I have questioned whether there are alternative compensation models that would better align their interests. The FIMSAC and the FIMSAC Credit Ratings Subcommittee have been thoughtfully deliberating this important question.

The FIMSAC Credit Ratings Subcommittee held several meetings to further discuss the matter. At the February 2020 FIMSAC meeting, the Subcommittee hosted a discussion on issuer-pay conflict of interest. Along with the agenda for the meeting, the FIMSAC published the Subcommittee's working document that summarizes the various viewpoints on an alternative compensation model and other potential initiatives. At the June 2020 FIMSAC meeting, the Subcommittee presented its "Preliminary Recommendation Regarding Ways to Mitigate Conflicts of Interest in Credit Ratings", which includes increased NRSRO disclosures; enhanced issuer disclosures; and exploration of a mechanism for bondholders to vote on issuer-selected NRSROs.

In November 2019, I also suggested some topics and areas of focus for the Investor Advisory Committee (IAC), including questions relating to the influence of credit rating agencies, their conflicts and compensation models and whether there are alternative payment models that would better align the interests of rating agencies with investors. The IAC hosted a panel discussion regard-

[15] Council on Foreign Relations, "The Credit Rating Controversy", CFR Staff, February 19, 2015, *https://www.cfr.org/backgrounder/credit-rating-controversy.*

[16] Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, November 21, 2019.

[17] See Remarks at Meeting of the Fixed Income Market Structure Advisory Committee (Nov. 4, 2019), available at *https://www.sec.gov/news/public-statement/statement-clayton-fimsac-110419.*

ing credit rating agencies at its meeting on May 21, 2020. The SEC has dedicated pages on its website to provide the public with information about the important ongoing work of the FIMSAC and the IAC.[18]

I have benefited from the insight, perspective and experience that advisory committees have brought to the SEC in recent years. I appreciate the time and effort that advisory committee members have devoted in supporting the SEC's mission to protect investors, maintain fair, orderly, and efficient markets and facilitate capital formation. I expect that the advisory committees continue will provide informed, diverse perspectives and related advice and recommendations, which will inform the Commission's policy decisions.

It is also worth noting that the SEC, in response to the current COVID–19 crisis, formed an internal, cross-divisional COVID–19 Market Monitoring Group to assist the Commission and its various divisions and offices in: (1) Commission and staff actions and analysis related to the effects of COVID–19 on markets, issuers, and investors—including our Main Street investors; and (2) responding to requests for information, analysis, and assistance from fellow regulators and other public sector partners. The group was also formed to assist in the SEC's efforts to coordinate with and support the COVID-related efforts of other Federal financial agencies and other bodies, including the President's Working Group on Financial Markets (PWG), the Financial Stability Oversight Council (FSOC) and the FSB, among others. Credit ratings have been a focus for the Monitoring Group, and staff has been exploring whether credit assessments and credit rating agency downgrades—and market anticipation of, and responses to, those ratings actions—may (1) contribute to negative procyclicality in certain circumstances and (2) have implications for financial stability. Together these projects are informing the Commission's assessment of the risks facing the markets.

Q.7. Your response also referenced some work that the SEC has done to respond to the conflicts of interest in the issuer-pays model.[19] An August *Wall Street Journal* report, however, stated that "Inflated bond ratings were one cause of the financial crisis. A decade later, there is evidence they persist. In the hottest parts of the booming bond market, S&P and its competitors are giving increasingly optimistic ratings as they fight for market share."[20]

Please explain why the SEC's efforts to respond to the bond ratings agencies' conflicts of interest have failed to prevent them from artificially inflating bond ratings.

A.7. As an initial matter, it is important to note that the Commission is statutorily prohibited from regulating the substance of credit ratings or the procedures and methodologies by which an NRSRO determines ratings. Within these statutory bounds, the Office of Credit Ratings (OCR) conducts an examination of each

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[18] See *https://www.sec.gov/spotlight/fixed-income-advisory-committee* and *https://www.sec.gov/spotlight/investor-advisory-committee.shtml.*

[19] Id.

[20] *Wall Street Journal,* "Inflated Bond Ratings Helped Spur the Financial Crisis. They're Back", Cezary Podkul and Gunjan Banerji, August 7, 2019, *https://www.wsj.com/articles/inflated-bond-ratings-helped-spur-the-financial-crisis-theyre-back-11565194951.*

NRSRO at least annually, covering eight review areas mandated by statute, including conflicts of interest and internal controls. Within the required review areas, the staff identifies areas of emphasis and issues of focus for the exams based upon a risk assessment. For example, as discussed in the staff's most recent examination report, the CLO market is an area of focus that the staff identified through the risk assessment process and reviewed as part of the NRSRO examinations. As part of the annual exam process, the staff examines whether an NRSRO conducts its business in accordance with and accurately discloses its policies, procedures, and methodologies, and can also examine compliance with the applicable regulatory requirements. The SEC makes available to the public the annual examination report that summarizes the staff's findings and recommendations from each NRSRO examination.

OCR is engaging with users of credit ratings and other market participants regarding potential improvements to regulation, including evaluating the effectiveness of Rule 17g–5(a)(3) of the Securities Exchange Act. OCR is also considering whether additional disclosures, including disclosures regarding ratings performance, economic stress assumptions, and deviations from methodologies, would help in assessing credit ratings.[21]

Q.8. Your November response also stated, "I expect to continue to discuss issues related to the [collateralized loan obligations], other credit funds and conditions in the credit markets more generally in the near term with my national and international regulatory colleagues, including through the [Financial Stability Oversight Council] and the [Financial Stability Board]. I will also request our staff in [the SEC Office of Credit Ratings], as well as staff in the Division of Investment Management and Division of Trading and Markets, to keep the issues you raised in your letter in mind as they carry out their examination and other responsibilities."[22]

- Please describe any near-term discussions you have had with national and international regulatory colleagues on this topic.
- Please describe any communications you have had with SEC staff or other SEC Commissioners regarding these issues.

A.8. In the area of corporate debt issues and other topics, the level of coordination among staff at the SEC and from the Treasury, Federal Reserve, CFTC, OCC and FDIC has been strong and helps all of us to better understand the broader trends and market implications. This coordination often takes place through the FSOC, where nonfinancial corporate credit and leveraged loans have been topics of discussion, including in the FSOC's 2020 annual report.

In terms of international work, I am a member of the board of the International Organization of Securities Commissions (IOSCO) and the Financial Stability Board (FSB) Plenary. In both organizations over the past year, we have focused on issues in corporate credit. The IOSCO board issued a report on liquidity in corporate bond markets under stressed conditions, and the FSB published a

[21] See *The SEC's Office of Credit Ratings and NRSRO Regulation: Past, Present, and Future,* Feb 24, 2020, available at *https://www.sec.gov/news/speech/speech-jessica-kane-2020-02-24.*

[22] Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, November 21, 2019.

report on leveraged loans and CLOs.[23] SEC staff also was involved in drafting both reports.

Additionally, as previously mentioned, the SEC formed an internal, cross-divisional COVID–19 Market Monitoring Group to assist the Commission and its various divisions and offices in (1) Commission and staff actions and analysis related to the effects of COVID–19 on markets, issuers, and investors; and (2) responding to requests for information, analysis, and assistance from fellow regulators and other public sector partners.

At the Commission, staff have closely coordinated to ensure that we are appropriately monitoring and assessing developments in the leveraged loan and CLO markets, including with respect to funds that participate in these markets. As previously mentioned, SEC staff analyzed the leveraged loan and CLO obligation markets as part of its interconnectedness and the effects of COVID–19 on the credit markets. SEC staff has also been utilizing public and non-public data to monitor holdings levels and changes over time. The Division of Investment Management staff also has a team dedicated to reviewing filings by registered funds, including those that invest in leveraged loans. The team has been especially focused on promoting clear and concise disclosure of credit and liquidity risks, including as it relates to extended settlement times.

Additionally, the COVID–19 Market Monitoring Group has been the exploration of whether credit assessments and credit rating agency downgrades—and market anticipation of, and responses to, those ratings actions—may contribute to negative procyclicality in certain circumstances and have implications for financial stability. The interrelationships between ratings actions, procyclicality and financial stability is a topic that other members of the global financial regulatory community are also examining, and we have benefited from our ongoing coordination and sharing of analysis and observations with them.[24]

Climate Risk Disclosure

Q.9. In July, Representative Sean Casten (D–IL–06) and I introduced H.R. 3623/S. 2017, the Climate Risk Disclosure Act of 2019.[25] Our bill would address the fact that investors currently lack access to basic information about the potential impact of the climate crisis on American companies, which creates significant environmental and financial risks. The Climate Risk Disclosure Act of 2019 would require public companies to include uniform information about their exposure to climate-related risks, which will help investors appropriately assess those risks, among other benefits, in their disclosures to the SEC.

[23] See IOSCO Board, Liquidity in Corporate Bond Markets Under Stressed Conditions (June 2019), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD634.pdf;* FSB, Vulnerabilities Associated With Leveraged Loans and Collateralized Loan Obligations (Dec. 19, 2019), available at *https://www.fsb.org/wp-content/uploads/P191219.pdf.*

[24] See Credit Ratings, Procyclicality and Related Financial Stability Issues: Select Observations (July 15, 2020), available at *https://www.sec.gov/news/public-statement/covid-19-monitoring-group-2020-07-15.*

[25] Office of Senator Warren, "Senator Warren, Representative Casten Lead Colleagues Introducing a Bill To Require Every Public Company To Disclose Climate-Related Risks", press release, July 10, 2019, *https://www.warren.senate.gov/newsroom/press-releases/senator-warren-representative-casten-lead-colleagues-introducing-a-bill-to-require-every-public-company-to-disclose-climate-related-risks.*

Q.9.a. The most recent volume of the *National Climate Assessment,* a scientific report issued by 13 Federal agencies in November 2018, stated that climate change may cause losses of up to 10 percent of the U.S. economy by 2100.[26] Additionally, a 2015 report from The Economist Intelligence Unit wrote that, of the world's current stock of manageable assets, the expected losses due to climate change are valued at $4.2 trillion by the end of the century.[27]

During the hearing, I asked you whether the SEC has a mandatory, uniform standard for climate risk so that investors can compare companies head-to-head.[28] You declined to answer my question directly, instead broadly stating that the SEC has a materiality standard.[29] In an October letter, you also stated that "investors must have the information necessary to understand the material risks posed to an issuer's business and financial performance."[30]

Do you believe that understanding which assets of public companies may be materially affected by climate change may help investors make more informed decisions about the risk of their investments?

Q.9.b. As I mentioned during the hearing, this summer, 40 major investors who collectively manage over a trillion dollars in assets joined with nonprofits, businesses, and former regulators in sending you a letter arguing that the climate crisis is material and a systemic threat to our economy and asking the Commission to mandate corporate climate risk disclosure.[31]

- Do you believe it would be useful for investors to understand public companies' contributions to greenhouse gas emissions and their exposure in the event of a Government—or market-mandated transition toward a lower-carbon economy?
- In an October letter, you stated that you "will consider [climate risk] issues . . . as [you] continue to evaluate whether current requirements elicit disclosures that provide insight into a company's assessment of, and plans for addressing, material risks—including those related to climate change—to its business, operations and financial condition."[32] Please provide detailed information about the meetings, advisory groups, processes, or decisions that the SEC or senior SEC staff have held or made regarding climate risk disclosure this year.

A.9.a.–b. To be clear, investors must have the information necessary to understand the material risks posed to an issuer's busi-

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[26] *New York Times,* "U.S. Climate Report Warns of Damaged Environment and Shrinking Economy", Coral Davenport and Kendra Pierre-Louis, November, 23, 2018, *https://www.nytimes.com/2018/11/23/climate/us-climate-report.html.*

[27] The Economist Intelligence Unit, "The Cost of Inaction", 2015, p. 41, *https://eiuperspectives.economist.com/sites/default/files/The%20cost%20of%20inaction_0.pdf.*

[28] Office of Senator Warren, "Senator Warren to SEC Chairman Clayton: You Have Done Nothing To Protect the Economy From Climate Change Risks", press release, November 17, 2020, *https://www.warren.senate.gov/newsroom/press-releases/senator-warren-to-sec-chairman-clayton-you-have-done-nothing-to-protect-the-economy-from-climate-change-risks.*

[29] Id.

[30] Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, October 13, 2020.

[31] *New York Times*, "Climate Change Poses 'Systemic Threat' to the Economy, Big Investors Warn", Christopher Flavelle, July 21, 2020, *https://www.nytimes.com/2020/07/21/climate/investors-climate-threat-regulators.html.*

[32] Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, October 13, 2020.

ness and financial performance. Climate-related issues can, depending on the facts and circumstances, be material to an issuer. To the extent material, issuers are required to disclose the current and expected future effects of climate-related issues on their operations and performance, and our rules are designed to elicit disclosures that are appropriately tailored to the particular issuer. This approach is important, particularly when the risks and uncertainty are not uniform. In these circumstances, issuers are generally in the best position to assess their particular facts and circumstances to determine whether an issue such as climate change presents a material risk, and what disclosures are required based on those facts and circumstances.

It has often been noted that this process can be more efficient if disclosure is standardized or uniform. However, standardization can be difficult across industries, and in particular, forward-looking information can be difficult to standardize in that different participants within and across industries may reasonably have differing assumptions about future developments. In addition, forcing metric-specific standardization in this area, particularly across differing sectors (e.g., insurance, biotechnology, data services and transportation), may lead to a loss of information and the insights that can be derived from examining a range of well-informed, company and sector-specific disclosures. SEC staff is diligently working through this complex issue through various domestic and international channels to see if greater standardization or comparability can be achieved, particularly within specific sectors. Personally, I am of the view that improving the decision-useful nature of disclosures in this area, including efforts to enhance comparability, may be best approached through broad principles, applied on a sector-by-sector basis.

The Commission and SEC staff have been actively engaged in climate-related disclosure issues for over a decade and remain committed to ensuring that investors are receiving accurate and adequate information about the companies in which they are investing. Since the early days of my tenure, I have been engaged with fellow regulators, investors, and other market participants on climate-related matters and, in particular, have sought to make the engagement between investors and companies, as well as investors and providers of financial products and services, substantive and further the dissemination of material information. This engagement includes work within IOSCO, where we have been active participants in the Sustainable Finance Task Force, and work within the FSB, including with its staff and current and former Chairmen (Randy Quarles and Mark Carney) and participating in its Sustainability Finance Network (Network). I have supported the work of the FSB's Task Force on Climate-Related Financial Disclosures (TCFD) and the Network, and they have issued several recent reports.[33] I also have engaged with the Investor Advisory

[33] See, e.g., Financial Stability Board, Stocktake of Financial Authorities Experience in Including Physical and Transition Climate Risks as Part of Their Financial Stability Monitoring (July 22, 2020), available at *https://www.fsb.org/wp-content/uploads/P220720.pdf;* Task Force on Climate-related Financial Disclosures: Status Report (June 2019), available at *https://www.fsb-tcfd.org/wp-content/uploads/2019/06/2019-TCFD-Status-Report-FINAL-053119.pdf;* "Sustain-

Continued

Committee[34] and our Asset Management Advisory Committee[35] on these topics and have encouraged each to do their part to improve the investor-registrant and investor-provider dialogue. Further, I have made my view on improving disclosure in these areas clear and welcomed input in various other fora.[36]

Q.10. A Government Accountability Office (GAO) report from February 2018 states, "[Securities and Exchange Commission (SEC)] reviewers may not have access to the detailed information that companies use to arrive at their determination of whether risks, including climate-related risks, must be disclosed in their SEC filings."[37] While the SEC has issued guidance for considering effects of climate change, the SEC has not mandated disclosures for how climate risk materially affects returns.

If Federal regulators do not have the information needed to fully understand public companies' climate-related risks under current law, do investors have the adequate information needed to make informed decisions about companies' risks?

In an October letter, you stated "I do not believe that any issues raised by the GAO Report . . . are cause for changes to our programs or approach."[38] Please explain why the SEC has declined to act on the GAO's concerns.

A.10. I am satisfied with the Commission's approach to this complex issue to date and believe it has been consistent with our ongoing commitment to ensure that our disclosure regime continues to provide investors with a mix of information that facilitates well-informed capital allocation decisions. This commitment has been, and in my view should remain, focused on providing investors with information material to an investment decision, including in areas involving future risks and uncertainty, such as climate change. Disclosure and materiality are at the heart of the Commission's regulatory approach. Our principles-based disclosure requirements should elicit disclosure that provides investors with insight regarding an issuer's assessment of, and plans for addressing, material risks to its business operations but also keeps pace with emerging issues, like climate change, without the need for the Commission to continuously add to or update the underlying disclosure rules as new issues arise.

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able Finance and the Role of Securities Regulators and IOSCO (Apr. 2020), available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD652.pdf.*

[34] See, e.g., Chairman Jay Clayton, Remarks to the SEC Investor Advisory Committee (Nov. 7, 2019), available at *https://www.sec.gov/news/public-statement/clayton-remarks-investor-advisory-committee-110719;* Chairman Jay Clayton, Remarks to the SEC Investor Advisory Committee (Dec. 13, 2018), available at *https://www.sec.gov/news/public-statement/clayton-remarks-investor-advisory-committee-meeting-121318.*

[35] See Remarks at Asset Management Advisory Committee Meeting (May 27, 2020), available at *https://www.sec.gov/news/public-statement/clayton-amac-opening-2020-05-27.*

[36] See, e.g., FCLTGlobal, "A Conversation With SEC Chairman Jay Clayton: Long-Term Investing, Sustainability, and the Role of Disclosures" (June 23, 2020), available at *https://www.fcltglobal.org/resource/jay-clayton-sec-webinar/.*

[37] Government Accountability Office, "Climate-Related Risks", February 2018, pp. 17–18, *https://www.gao.gov/assets/700/690197.pdf.*

[38] Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, October 13, 2020.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM JAY CLAYTON

Q.1. What discussion has the SEC staff and leadership had about business interruption insurance? How has the expectation of disclosure regarding the business interruption insurance carried by publicly traded companies changed due to the pandemic?

A.1. A fundamental principle for the SEC and our capital markets has always been—and today is even more important than ever—the importance of issuers providing investors with financial and operational disclosures that are clear, high-quality and timely. It is no surprise we have observed the presence of uncertainty regarding the financial and operating status of companies, as well as their future prospects, and a resulting thirst for information from investors and the marketplace more generally. I believe that the timely disclosure of high-quality information—be it positive, negative, or neutral, and be it definitive or subject to uncertainty in light of the circumstances—increases credibility and has a generally calming value that contributes to market function, and in turn, reduces the potential for systemic risk. In March 2020, along with the Director of the Division of Corporation Finance, I issued a statement discussing the importance of corporate disclosures and urging issuers to provide investors with as much information as practicable regarding their current financial and operating status, as well as forward-looking information about their future operational and financial planning.

Companies should consider their disclosure obligations within the context of the Federal securities laws and our principles-based disclosure system. The cornerstone of this system is the timely, robust, and complete disclosure of material information. The Commission has made clear that disclosure requirements can apply to a broad range of business risks even in the absence of specific line-item requirements. A number of existing rules or regulations may require disclosure about the known or reasonably likely risks and effects of COVID–19 on a company's business operations and financial condition. For example, disclosure may be necessary or appropriate in management's discussion and analysis, the business section, risk factors, legal proceedings, disclosure controls and procedures, internal controls over financial reporting and the financial statements. Disclosure about the risks and effects of COVID–19 may need to include information about how the company and management are responding to them, including to the extent material, whether the company has obtained business interruption insurance. While companies should routinely disclose material information about how they are addressing business risks, disclosure about whether a company has obtained business interruption insurance may be particularly important in helping investors make informed investment and voting decisions in the current environment.

Q.2. Regarding the changes to the Accredited Investor rule, does the SEC have any data or research evidence to show that a million dollars in wealth indicates that someone is sophisticated enough to invest in an illiquid offering that provides limited information?

- Do you think people who qualify solely based on assets are vulnerable to fraud?

- Why did the SEC not index the monetary thresholds to inflation?

A.2. The Commission recognized in the adopting release for the recent amendments to the definition of "accredited investor" that in the case of individuals, higher income or net worth does not necessarily correlate to a higher level of financial sophistication. However, until these amendments were adopted, the test for individuals to qualify as accredited investors had relied exclusively on a person's income and net worth. This use of income or wealth as the only proxy for a person's financial sophistication set up a binary test, where an individual who may not meet the wealth tests but who is clearly financially sophisticated was denied the opportunity to participate in our private markets. In my view, the goal of the amendments is to more effectively include in the accredited investor definition investors that have the knowledge and experience to invest in private offerings. The definition now includes ways for individual investors to qualify for accredited investor status that are not tied to wealth but rather actual sophistication. It is my view that, speaking generally, this measure will improve the overall level of sophistication of our accredited investor pool, benefiting all members of that pool.

We will continue to consider the appropriateness of the financial thresholds in connection with the Commission's quadrennial review of the accredited investor definition required by the Dodd-Frank Act. Staff is also monitoring the size of the accredited investor pool, the characteristics of individual accredited investors who participate in the private markets, and, to the extent data is available, performance and incidence of fraud in exempt offerings.

Q.3. What has the SEC done to make it easier for shareholders to vote?

A.3. The proxy system is the primary means through which most public company shareholders cast their votes and express their views on matters of collective importance. Modernizing and enhancing the efficiency of the proxy process for the benefit of all shareholders is an important priority of the Commission. In recent years, the Commission has made a number of changes to the rules governing proxy voting, many of which had not been updated in decades.

In July 2020, the Commission adopted amendments to the rules governing proxy solicitations that are designed to ensure that clients of proxy voting advice businesses have reasonable and timely access to transparent, accurate, and complete information on which to make voting decisions. Facilitating investor access to enhanced discussion of proxy voting matters, even where proxy voting advice is not adverse to the registrant's recommendation or where there are no errors in the advice, contributes to more informed proxy voting decisions. The principle that more complete and robust information and discussion akin to what would be available at an in-person shareholder meeting leads to more informed investor decisionmaking, and therefore results in choices more closely aligned with investors' interests, was a principal factor in the Commission's adoption of these amendments. Indeed, in the adopting release, the Commission stated its belief that it is appropriate to adopt reasonable measures designed to promote the reliability and completeness of information available to investors and those acting on their behalf at the time they make voting determinations, regardless of the incidence of errors in proxy voting advice.

The Commission's actions are of significant importance to long-term retail investors. The majority of our Main Street investors participate in our public markets through intermediaries, most commonly through ownership of mutual funds and exchange-traded funds. Institutional investors, including the funds that hold retail investments, own approximately 72 percent of the domestic stock market value. Proxy voting, in the interests of those retail investors, is important to fund performance and retail investor welfare. Many of the institutions that manage retail investor money retain proxy voting advice businesses for services relating to both the substance of voting decisions and the process of voting, including automated voting. These businesses are uniquely situated to influence proxy voting decisions. To the extent that investment professionals rely on the advice of these businesses when voting the shares of Main Street investors, it is important that (1) they do so in a manner consistent with their fiduciary obligations, and (2) they have access to transparent, accurate, and materially complete information on which to make their voting decisions. I believe the Commission's actions will help ensure that the interests of Main Street investors and the obligations of those who vote on their behalf will not only be better aligned, but better decisions will be made.

In September 2020, the Commission also adopted amendments to modernize its shareholder proposal rule, which governs the process for a shareholder to have its proposal included in a company's proxy statement. These amendments are designed to facilitate engagement among shareholder-proponents, companies, and other shareholders, and preserve the ability of smaller shareholders to access the proxy statements of the companies in which they have demonstrated a continuing interest. The amendments are intended to help ensure that a shareholder's ability to have a proposal included alongside management's in a company's proxy materials—and thus to draw on company resources and to command the time and attention of the company and other shareholders—is appropriately calibrated and takes into consideration the interests of not only the shareholder who submits a proposal but also the company and other shareholders, who bear the costs associated with the inclusion of such proposals in the company's proxy statement.

I expect the Commission's work to modernize and enhance the proxy process to continue, including by looking at ways to increase the voting participation rates of retail investors. Staff is also engaging with issuers, broker-dealers, transfer agent representatives, proxy service providers and other market participants to explore ideas for improvements to the "proxy plumbing." In particular, the staff has regularly engaged with major proxy service providers about their efforts to enhance the readability of the proxy materials sent to investors and to utilize modern communications methods in delivering these materials to retail investors. The staff is also focused on ways to ensure greater accuracy in the tabulation of votes. Market participants have strong and differing views on the best approach for addressing this concern, with, for example, some advocating for premailing reconciliation of the eligible voting shareholder base to minimize the likelihood of voting tabulation errors at the meeting. Others, however, express concerns about the costs of such an approach and prefer alternative solutions. The staff will assess these issues as it finalizes recommendations for the Commission.

Q.4. What has the SEC done to implement the Investor Advisory Committee's recommendations to improve public companies' disclosures on environmental, social, and governance (ESG) issues?

Q.5. Do you think that asset prices fully incorporate the relevant risks due to climate change, such as physical risk, transition risk, and liability risk?

Q.6. Currently, investors seeking ESG information mostly rely on third party data providers. Will the SEC provide issuers with a reliable and consistent framework to disclose material that is decision useful, comparable, and consistent information?

Q.7. How will the SEC level the playing field in providing ESG information among all U.S. issuers, regardless of market cap size or capital resources?

Q.8. The International Accounting Standards Board recently issued guidance addressing how existing requirements under the International Financial Reporting Standards intersect with climate-related risks. The guidance defined how climate-related risks may need to be reflected within financial statements. Should the Financial Accounting Standards Board undertake a similar analysis of how climate risks may translate when applying Generally Accepted Accounting Principles (GAAP)?

A.4.–A.8. As a general matter, I believe the Commission's longstanding, principles-based approach to disclosure is consistent with our ongoing commitment to ensure investors are provided a mix of information that facilitates well-informed capital allocation decisions. This commitment has been, and in my view should remain, focused on providing investors with information material to an investment decision, including in areas involving future risks and uncertainty, such as climate change. Disclosure and materiality are at the heart of the Commission's regulatory approach. Our principles-based disclosure requirements should elicit disclosure that provides investors with insight regarding an issuer's assessment of, and plans for addressing, material risks to its business operations but also keeps pace with emerging issues, like climate change or COVID–19, without the need for the Commission to continuously add to or update the underlying disclosure rules as new issues arise.

I believe "ESG" is not monolithic and should not be treated as such. "E", "S", and "G" should each be viewed within its own context because, for one reason, the approach to investment analysis appears to vary widely, in some cases incorporating objectives other than investment performance over a particular timeframe or frames. With respect to "E" issues and climate change specifically, as a threshold matter, I note that, to the extent material to an investment decision, issuers are required to disclose the current and expected future effects of climate-related issues on their operations and performance. The issue of climate change and its current and potential future impact on issues, including as a result of regulatory and other developments is one where we are engaged on many levels, including with our domestic and international counterparts. I and others at the Commission, including through the work of the Asset Management Advisory Committee, have invested substantial time and effort, domestically and internationally, in this area, including through our participation in various International Organization of Securities Commissions (IOSCO) and Financial Stability Board (FSB) efforts. As examples, at IOSCO, we have been active participants in the Sustainable Finance Task Force and have supported the work of the FSB, including the industry-led Task Force on Climate-Related Financial Disclosures (TCFD).

While I believe that in many cases one or more "E" issues, "S" issues, or "G" issues are material to an investment decision, I have not seen circumstances where combining an analysis of "E", "S", and "G" together, across a broad range of companies, for example with a "rating" or "score," particularly a single "ESG" rating or score, would facilitate meaningful investment analysis that was not significantly over-inclusive and imprecise. It has often been noted that this process can be more efficient if disclosure is standardized or uniform. However, depending on the issue, standardization can be difficult, ineffective and inappropriate across industries. In particular, forward-looking information can be difficult to standardize in that different participants within and across industries may reasonably have differing assumptions about future developments. I have discussed these considerations in some detail previously. In particular, efforts to "score" a particular investment (e.g., a mutual fund or ETF) from an overall environmental or "ESG" perspective appear particularly problematic, including that they may be designed more for marketing reasons than to further an investment thesis. In addition, forcing metric-specific standardization in this area, particularly across differing sectors (e.g., insurance, biotechnology, data services and transportation), may lead to a loss of information and the insights that can be derived from examining a range of well-informed, company and sector-specific disclosures.

That said, as noted above, we are diligently working through this complex issue through various domestic and international channels to see if greater standardization or comparability can be achieved, particularly within specific sectors. Personally, I am of the view that improving the decision useful nature of disclosures in this area, including efforts to enhance comparability, may be best approached through broad principles, applied on a sector-by-sector basis. From my perspective, I believe the work of international bodies, for example TCFD as discussed in its recent 2020 Status Report, is trending in this direction.

Q.9. Please explain how the SEC calculated a $2.5 million fine for former Wells Fargo Chief Executive Officer John Stumpf. Why did the settlement not requiring him to admit wrongdoing?

A.9. Section 8A(g)(1) of the Securities Act authorizes the Commission to impose a civil money penalty when it is in the public interest. In making the public interest determination, the Commission considers: (1) whether the act or omission involved fraud; (2)

whether the act or omission resulted in harm to others; (3) the extent to which any person was unjustly enriched; (4) whether the individual has committed previous violations; (5) the need to deter that person and others from committing violations; and (6) such other matters as justice may require. Section 8A(g)(2) of the Securities Act establishes a three-tier system for setting the maximum penalty the Commission may impose on an individual: (1) a first-tier penalty for each act or omission; (2) a second-tier penalty for each act or omission involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (3) a third-tier penalty for each act or omission involving fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement that, directly or indirectly, resulted in (or created a significant risk of) substantial losses to other persons or resulted in substantial pecuniary gain to the wrongdoer.

With respect to admissions, the Commission employs a case-by-case assessment based on the particular facts and circumstances of the matter and considers the relative benefits of added accountability and deterrence from admissions and the value in avoiding, where appropriate, drawn-out proceedings that strain resources and lengthen the time to resolution, including for injured investors to receive compensation.

Q.10. The SEC has encouraged public companies to provide details on how they consider diversity when making decisions regarding the makeup of boards. Firms were asked to voluntarily report diversity metrics. Last year, you reported that only about 5 percent of firms chose to report diversity metrics. How has that changed since last year?

A.10. In addition to promoting a culture of diversity, inclusion, and opportunity at the agency, we are also looking to the industry we regulate to be leaders in promoting opportunities for historically underrepresented populations within their workforces. To that end, the SEC, led by the Office of Minority and Women Inclusion (OMWI), has increased its focus on diversity in the financial services industry and the related value-enhancing proposition in a number of ways, including through outreach and advisory committee participation, including several diversity-specific panel discussions through the Asset Management Advisory Committee.

In 2018, the SEC launched its first-ever Diversity Assessment Report and communicated directly with approximately 1,300 of the largest SEC-registered firms to encourage responses. Thirty-eight regulated entities responded, and while this response was representative of almost half of the employees in the securities and investment industry, the results in terms of total firm participation were disappointing.

The 2020 collection of the Diversity Assessment Reports is now underway, and the SEC has taken steps a number of steps to encourage more firms to share information. For example, in March 2020, OMWI hosted a webinar for regulated entities to discuss the Diversity Assessment Report and to promote collaboration and best practices, and over 50 regulated entities joined via WebEx. In April and August 2020, OMWI had virtual meetings with the Securities Industry and Financial Markets Association (SIFMA) Diversity

Committee and discussed, among other topics, how SIFMA could assist the SEC efforts to improve the number for self-assessment reporting by member firms.

The responses for the 2020 Diversity Assessment Report exercise are encouraging. In several instances, multiple entities of the same parent company received a request, and a single response covers all the parent company's regulated entities on our list of companies. We have received 41 responses from this group, which represents an 86 percent increase in the number of responses received from this group of regulated entities in 2018 (22). The 41 responses received from this group cover 105 entities (8.4 percent) on the entire list of potential respondents. By comparison, the 38 responses during the entire 2018 collection covered about 5 percent of the list of potential respondents that year.

RESPONSE TO WRITTEN QUESTION OF SENATOR SINEMA FROM JAY CLAYTON

Q.1. During this pandemic, the SEC has cautioned investors against fraudulent schemes perpetrated by actors that claim to prevent or cure the coronavirus.

- What measures has the SEC taken to protect investors from COVID-related scams?
- When it comes to COVID-related scams, have fraudsters been targeting any particular demographics, such as seniors?

A.1. During the pandemic, the SEC's Office of Compliance Inspections and Examinations (OCIE) and Division of Enforcement (Enforcement) expanded their continuous investor protection work to incorporate the unique compliance challenges and the unfortunately inevitable frauds and illicit schemes generated by COVID–19. Starting in February 2020, the Commission began suspending trading where immediate action was necessary in light of questions regarding the accuracy and adequacy of information in the marketplace. The Commission suspended trading in 36 issuers, with 24 of those in March and April alone. The Commission also brought seven COVID-related enforcement actions within the first year of the pandemic, six of which alleged fraud against issuers and individuals based on COVID–19-related claims. Enforcement has also opened over 150 COVID-related investigations and inquiries.

Led by the Office of Investor Education and Advocacy (OIEA), the SEC has also continued its important education and outreach to investors and market participants about COVID–19-related scams. OIEA, along with Enforcement's Retail Strategy Task Force, has issued investor alerts to inform and educate investors about concerns related to recent market volatility and COVID–19-related schemes, as well as an alert warning investors of bad actors using CARES Act benefits to promote high-risk, high fee investments and other inappropriate products and strategies. OIEA and the SEC's 11 regional offices have also continued targeted outreach events to retail investors, including to seniors, servicemembers, and other potentially vulnerable populations. In addition, two of the Commission's advisory committees—the Investor Advisory Committee and the Small Business Capital Formation Advisory Committee—convened special meetings that were held virtually and broadcast live to the public to provide insight into the operational, health, safety, and other challenges faced by public companies and small businesses, as well as individual and institutional investors, during this time.