

**Testimony on “Oversight of the Securities and Exchange Commission”**

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

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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).<sup>1</sup> 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.<sup>2</sup> 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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<sup>1</sup> 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.

<sup>2</sup> 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,<sup>3</sup> 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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<sup>3</sup> 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](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.<sup>4</sup> 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.<sup>5</sup> 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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<sup>4</sup> 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>.

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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).<sup>9</sup> The FSB is completing a review of market

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<sup>6</sup> 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>.

<sup>7</sup> 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.

<sup>8</sup> 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.

<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

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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<sup>10</sup> 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>.

<sup>11</sup> 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>.

<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

### ***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

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<sup>13</sup> 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>.

<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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,<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> 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

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<sup>15</sup> 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>.

<sup>16</sup> See <https://www.sec.gov/files/clayton-letter-to-chairman-sherman-20200914.pdf>.

<sup>17</sup> See Frauds Targeting Main Street Investors—Investor Alert (Apr. 10, 2020), available at [https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia\\_frauds](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](https://www.sec.gov/oiea/investor-alerts-and-bulletins/ia_coronavirus) (both updated June 17, 2020).

<sup>18</sup> 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>.

<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

### **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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<sup>20</sup> See <https://www.sec.gov/file/diversity-and-inclusion-strategic-plan-2020>.

<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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

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<sup>22</sup> 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.

<sup>23</sup> 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>.

<sup>24</sup> 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.<sup>25</sup> 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

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<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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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<sup>26</sup> 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>.

<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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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<sup>28</sup> 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>.

<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

### ***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.<sup>32</sup> 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.<sup>33</sup> The proposed disclosure framework

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<sup>30</sup> 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>.

<sup>31</sup> 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>.

<sup>32</sup> 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>.

<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup>

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<sup>34</sup> 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>.

<sup>35</sup> 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>.

<sup>36</sup> 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>.

<sup>37</sup> 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](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.<sup>38</sup> 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.<sup>39</sup>

*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.<sup>40</sup> 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.<sup>41</sup> 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

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<sup>38</sup> 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>.

<sup>39</sup> 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>.

<sup>40</sup> 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>.

<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> 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.

*Combating 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

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<sup>42</sup> 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>.

<sup>43</sup> 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>.

<sup>44</sup> 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.<sup>45</sup> 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,<sup>46</sup> 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.<sup>47</sup> Since its inception in 2017, the FIMSAC hosted 11 meetings and made 16 recommendations for action by the Commission and FINRA.<sup>48</sup> 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.<sup>49</sup> 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

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<sup>45</sup> 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>.

<sup>46</sup> 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>.

<sup>47</sup> 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>.

<sup>48</sup> 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>.

<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> 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.<sup>53</sup> 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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<sup>50</sup> 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.

<sup>51</sup> 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>.

<sup>52</sup> 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>.

<sup>53</sup> 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.<sup>54</sup>

*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.<sup>55</sup> 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.<sup>56</sup> Work pursuant to this MOU has already benefited our rulemaking efforts.

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<sup>54</sup> 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>.

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

<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup>

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).<sup>60</sup> 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

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<sup>57</sup> 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>.

<sup>58</sup> 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>.

<sup>59</sup> See Spotlight on Risks for Investors in Emerging Markets, available at <https://www.sec.gov/page/emerging-markets-roundtable>.

<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>

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<sup>61</sup> 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>.

<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup>

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

<sup>64</sup> 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>.

<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup> In October 2020, the Commission issued its largest ever award to a single whistleblower, \$114 million.<sup>69</sup> In September 2020, the Commission adopted amendments intended to provide greater transparency, efficiency and clarity, as well as strengthen, the Whistleblower Program.<sup>70</sup>

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

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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>.

<sup>66</sup> 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>.

<sup>67</sup> 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>.

<sup>68</sup> 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>.

<sup>69</sup> 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>.

<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup> 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.<sup>73</sup> 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,

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<sup>71</sup> 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>.

<sup>72</sup> 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.

<sup>73</sup> 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.<sup>74</sup>

During FY 2020, OCIE conducted nearly 3,000 examinations, covering 15 percent of all registered investment advisers.<sup>75</sup> 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

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<sup>74</sup> 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>.

<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup> 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 39<sup>th</sup> annual Government-Business Forum on Small Business Capital Formation (Forum) in an

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<sup>76</sup> 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>.

<sup>77</sup> 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.”<sup>78</sup> 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.<sup>79</sup>

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.<sup>80</sup> 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.<sup>81</sup> 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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<sup>78</sup> 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>.

<sup>79</sup> 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>.

<sup>80</sup> 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>.

<sup>81</sup> 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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

To help Main Street investors better understand Form CRS and its benefits, the Commission has established a new investor-focused webpage.<sup>85</sup> 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.<sup>86</sup> 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 32<sup>nd</sup> 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

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<sup>82</sup> 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>.

<sup>83</sup> 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>.

<sup>84</sup> 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>

<sup>85</sup> See <https://www.investor.gov/home/welcome-investor-gov-crs>.

<sup>86</sup> 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.