

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

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

**Jay Clayton  
Chairman, U.S. Securities and Exchange Commission  
December 10, 2019**

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.

Chairing the Commission is a great privilege, and I am fortunate to be able to observe firsthand the incredible work done by the agency’s almost 4,400 dedicated staff in Washington, DC and across our eleven regional offices. Our people are our greatest asset and are often our most direct connection to investors and other market participants. None of the work described in this testimony—which is only a small sample of the overall work of the staff over the past year—is possible without these dedicated and experienced professionals. In turn, our public-facing work is made possible thanks to the important, often behind-the-scenes work of the agency’s administrative and operations personnel. In short, the women and men of the SEC bring a mission-focused, team-oriented perspective to our work every day, always keeping the long-term interests of our Main Street investors front of mind.

I am proud of our accomplishments over the past year and look forward to building on this work as we continually review and recalibrate our efforts. America’s historical approach to our capital markets—an approach focused on transparency, materiality, fairness and accountability—has produced a remarkably deep pool of capital with unprecedented participation. It is our Main Street investors and their willingness to entrust their hard-earned money to our capital markets for the long term that have provided the seeds for the deepest, most dynamic and most liquid capital markets in the world. Their capital provides businesses and municipalities with the opportunity to invest, grow and create jobs with an organic dynamism that stands apart both today and since the Commission was formed 85 years ago. In turn, our markets have provided American Main Street investors with better domestic and international investment opportunities than comparable investors in other jurisdictions.

We are dedicated to preserving, expanding and improving this far-reaching and extremely beneficial economic and social dynamic.

---

<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.

## **Strategic Plan**

Last fall, the Commission released its Strategic Plan for 2018-2022. The Plan provides a forward-looking framework for making the SEC more effective, focusing on the most important goals and initiatives that will best position the SEC to fulfill its mission, with the primary focus of the Plan being on investors, innovation and improved performance.<sup>2</sup> Over the past year, we have made meaningful progress toward achieving these goals.

Our first goal is to focus on the long-term interests of Main Street investors. This year we have continued to place a high priority on direct engagement with investors and other market participants. Staff across our divisions and offices traveled around the country to attend events both to educate investors and to listen to the challenges they have experienced first-hand in our markets. It is invaluable for us to hear from them, in their own words, how our capital markets are working for them and what more can be done.

Our second goal is to be responsive and innovative in the face of significant market developments and trends. As technological advancements and commercial developments have changed how our securities markets operate, the SEC's ability to remain an effective regulator requires that we continuously monitor the market environment and, as appropriate, adjust and modernize our expertise, rules, regulations and oversight tools and activities. The Commission advanced this goal on several fronts, including through the work across our divisions and offices to modernize our regulatory framework, as well as the Commission's forward-thinking approach to an increasingly technological and data-driven landscape through the work of the Division of Enforcement's (Enforcement) Cyber Unit and the new Strategic Hub for Innovation and Financial Technology (FinHub).

Our third goal—elevating the agency's performance through technology, data analytics and human capital—embodies our commitment to maintaining an effective and efficient operation in our ever-evolving capital markets ecosystem. Maintaining a high level of staff engagement, performance and morale is critical to our ability to execute the SEC's mission. We deeply appreciate the resources Congress has provided, and in fiscal year (FY) 2019, the funding Congress provided allowed us to lift our hiring freeze and make new hires in critical areas—including enforcement and examinations, market oversight, cybersecurity, and small business capital formation. I am pleased to report that we have filled approximately 140 new positions (over 90 percent of our target) with high-quality individuals who have the experience and expertise necessary to enhance our market oversight and improve our ability to serve American investors.

One of the most important ways we can continually improve the SEC's operational effectiveness is by investing in our technology program, including improving our data analysis and promoting information sharing and collaboration across the agency. In addition, focusing on cybersecurity remains a top priority for the agency. The resources Congress has provided have helped us better address our technology challenges, and we have applied these resources to a number of key initiatives designed to strengthen our cybersecurity risk profile, including efforts

---

<sup>2</sup> See U.S. Sec. and Exch. Comm'n Strategic Plan: Fiscal Years 2018-2022 (Oct. 2018), *available at* [https://www.sec.gov/files/SEC\\_Strategic\\_Plan\\_FY18-FY22\\_FINAL.pdf](https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL.pdf).

to modernize legacy systems and infrastructure and reduce our risk profile. We also will continue to work to better streamline and automate our business processes so we can conduct our work more efficiently in support of the SEC’s mission.

### **FY 2019 Initiatives and Upcoming Policy Agenda**

As I have previously testified, the Commission’s Regulatory Flexibility Agenda is now constructed to enhance transparency and accountability to the public and Congress, in addition to providing a focal point for coordination within the SEC. Since 2017, these agendas have embodied a collective effort, benefiting from the input of my fellow Commissioners, our division and office heads and many members of our staff on key questions, including: (1) what initiatives the agency could reasonably expect to complete over 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.

In 2018, the Commission advanced 23 of the 26 rules in the near-term agenda, a good result on both a percentage basis (88 percent) and an absolute basis.<sup>3</sup> For 2019, the number of items on our near-term agenda increased to a seemingly aspirational 39.<sup>4</sup> As of the date of this testimony, the Commission has advanced 34 of those 39 rulemakings, or 87 percent of the items—even though our rulemaking efforts were stalled for more than a month as a result of the lapse in appropriations earlier this year.<sup>5</sup> In addition, the Commission advanced several rulemakings more quickly than expected.

Of course, we must be judged on the impact of our efforts and not the number of rules proposed and adopted. In evaluating that impact, we ask whether our efforts meaningfully advance the Commission’s tripartite mission, and importantly, whether our actions further the interests of our long-term Main Street investors. I believe modernization is a particularly effective means to advance each component of our mission simultaneously. We have approached modernization by: (1) identifying aspects of our regulatory framework that are out of step with our ever-changing capital markets ecosystem; and (2) bringing those aspects back into line with market realities in a way that advances all aspects of our mission. With that perspective in mind—a perspective that moves beyond the static and often stale claims that advancing one aspect of our mission (e.g., investor protection) must come at a cost to another (e.g., capital formation)—I will highlight some of the Commission’s major accomplishments in 2019.

### ***Standards of Conduct for Investment Professionals***

In June 2019, the Commission adopted a package of rulemakings and interpretations designed to enhance the quality and transparency of retail investors’ relationships with

---

<sup>3</sup> See Testimony on Oversight of the U.S. Securities and Exchange Commission (Dec. 11, 2018), *available at* <https://www.sec.gov/news/testimony/testimony-oversight-us-securities-and-exchange-commission-0>.

<sup>4</sup> See Appendix A. As I have previously remarked, in the earlier parts of the decade—known in the financial regulatory community as the “post Dodd-Frank era”—the Commission’s near-term portion of the “Reg Flex” agenda has become too aspirational. On average over that period, only about one-third of the rules listed in the Commission’s agenda to be adopted in the following 12 months were timely completed.

<sup>5</sup> See Appendix A. Of those 39 rulemakings, 18 were scheduled for adoption by this year, and as of today, we have completed 16 of the 18, or 89 percent.

investment advisers and broker-dealers and bring the standards of conduct and required disclosures of financial professionals in line with what a reasonable investor would expect while preserving access—in terms of choice and cost—to a variety of investment services and products. Said simply—from discount brokerage, to internet advisers, to full-service commission brokerage, to a wrap-fee combination of advisory and brokerage—(1) financial professionals cannot put their interests ahead of their client’s or customer’s interests; and (2) financial professionals must tell their clients and customers, in plain language, the scope of the services they provide and how they make money providing those services.

Our final rulemaking package was the result of an organic, staff-driven process, drawing on the decades of experience and expertise of our staff as well as input from an array of market participants—including from seven investor town halls around the country where, in an unscripted, take-any-questions environment, we heard directly from investors. We are continuing this direct Main Street investor engagement, as discussed in more detail below. This rulemaking package also benefitted significantly from thousands of unique comment letters and the results of substantial investor testing. I am extremely grateful to our staff for bringing long overdue regulatory rationality and clarity to this important market, which encompasses some 43 million American households.

Specifically, these actions include new Regulation Best Interest, the new Form CRS Relationship Summary (Form CRS) and two separate interpretations under the Investment Advisers Act of 1940 (Advisers Act).<sup>6</sup> Individually and collectively, these actions will enhance and clarify the standards of conduct applicable to broker-dealers and investment advisers, help retail investors better understand and compare the services offered and make an informed choice of the relationship best suited to their needs and circumstances and foster greater consistency in the level of protections provided by each regime, particularly at the point in time that a recommendation is made by a broker-dealer or advice is provided by an investment adviser.

Under Regulation Best Interest, broker-dealers are required to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer. This obligation includes account recommendations such as whether to roll an employer-sponsored 401(k) account into an IRA. Regulation Best Interest enhances the broker-dealer standard of conduct beyond existing suitability obligations and makes it clear that a broker-dealer may not put its financial interests ahead of the interests of a retail customer when making recommendations. In order to comply with Regulation Best Interest, broker-dealers must satisfy four specified component obligations—Disclosure, Care, Conflict of Interest and Compliance—each of which includes a number of prescriptive requirements, all of which must be satisfied to comply with the rule.

Form CRS will require investment advisers and broker-dealers to provide retail investors with streamlined information to aid them in understanding the nature of their relationship with their financial professional. Firms will be required to provide information about their relationship and services, fees and costs, conflicts of interest, standard of conduct and legal or

---

<sup>6</sup> See Press Release 2019-89, SEC Adopts Rules and Interpretations to Enhance Protections and Preserve Choice for Retail Investors in Their Relationships with Financial Professionals (June 5, 2019), *available at* <https://www.sec.gov/news/press-release/2019-89>.

disciplinary history of the firm and its financial professionals, in addition to other information. This disclosure will have a standardized question-and-answer format to promote comparability across firms. Additionally, Form CRS will include a link to a dedicated page on the Commission’s investor education website, Investor.gov, which offers educational information about broker-dealers and investment advisers, and other retail investor-oriented materials.

The Commission also issued an interpretation to reaffirm—and in some cases clarify—certain aspects of the federal fiduciary duty that an investment adviser owes to its clients, confirming the Commission’s longstanding view that an investment adviser must, at all times, serve the best interest of its clients and not subordinate its client’s interest to its own. This interpretation underscores the core duties of care and loyalty that advisers have as fiduciaries and provides examples intended to help advisers better understand how those duties apply in practice. Additionally, the Commission issued an interpretation of the “solely incidental” prong of the broker-dealer exclusion under the Advisers Act, which confirms and clarifies the Commission’s position and provides guidance on the application of the interpretation to exercising investment discretion over customer accounts and account monitoring.

In connection with this rulemaking, the Commission launched a Main Street investor education campaign designed to help retail investors understand key differences between broker-dealers and investment advisers and help them decide whether working with one of these types of financial professionals is right for them. Features of this campaign include short, educational videos designed to provide ordinary investors with basic information about investment professionals available on Investor.gov,<sup>7</sup> in addition to a series of retail investor events.<sup>8</sup>

Recognizing that these new rules may require various market participants to make changes to their operations, including to their mandatory disclosures, marketing materials and compliance systems, the Commission established an inter-divisional Standards of Conduct Implementation Committee who are meeting regularly to assist market participants with their implementation efforts. Market participants are actively engaging with staff in planning for implementation and compliance, and our staff has already issued several responses to frequently asked questions.<sup>9</sup> I encourage the public to continue this engagement by sending questions to [IABDQuestions@sec.gov](mailto:IABDQuestions@sec.gov). We recognize that there is more work to be done, and we are committed to continued engagement with investors and other market participants.

### ***Improving the Proxy Process***

Improving the transparency, accountability and functionality of the proxy process is another significant Commission initiative designed to serve the interests of our long-term Main Street investors. In the past two decades, the proxy process has become one of both (1) increased complexity and (2) importance to investors, issuers and investment advisers.

---

<sup>7</sup> See Press Release 2019-153, SEC Releases Videos for Investors Choosing and Working with a Financial Professional (Aug. 15, 2019), available at <https://www.sec.gov/news/press-release/2019-153>.

<sup>8</sup> See Press Release 2019-144, SEC Chairman Clayton Announces Event for Main Street Investors in Chicago (Aug. 5, 2019), available at <https://www.sec.gov/news/press-release/2019-144>; Press Release 2019-100, SEC Chairman Clayton Announces Events for Main Street Investors in Boston (June 19, 2019), available at <https://www.sec.gov/news/press-release/2019-100>.

<sup>9</sup> See Frequently Asked Questions on Form CRS, available at <https://www.sec.gov/investment/form-crs-faq>.

Commission rule changes, state law changes, corporate governance practices, technology and other factors have all increased the interest in, and significance of, shareholder engagement and shareholder voting in our public capital markets. During this time, investment advisers have also assumed a much greater role in our marketplace and, consequently, a greater role in the area of beneficial owner- shareholder-company engagement.<sup>10</sup> Last fall, the Commission held a roundtable on improving the proxy process that brought together investors, issuers and other market participants who raised and discussed many issues in this area.<sup>11</sup> We have also received significant public comment and helpful suggestions to improve our proxy voting system.<sup>12</sup> While there are a wide range of viewpoints on these topics, one thing is clear—there is significant interest in modernizing and improving the proxy process. The Commission has taken a number of concrete steps during this year to increase transparency, accountability and functionality in the area of proxy voting.

Building on decades of experience and extensive engagement, in August 2019, the Commission took an important first step in strengthening the integrity of the proxy voting process.<sup>13</sup> Specifically, the Commission issued guidance to assist investment advisers in establishing and fulfilling their proxy voting responsibilities. Voting is a key component of shareholder engagement and investing generally. Investment advisers are fiduciaries and owe each of their clients duties of care and loyalty with respect to actions taken on the clients' behalf, including proxy voting. The guidance clarifies how an investment adviser's fiduciary duty and Rule 206(4)-6 under the Advisers Act relate to an adviser's proxy voting on behalf of clients, including if the investment adviser retains a proxy voting advice business. On the same date, the Commission issued an interpretation that proxy voting advice provided by proxy voting advice businesses generally constitutes a "solicitation" under the federal proxy rules and provided related guidance about the application of the proxy antifraud rule to proxy voting advice.

Last month, the Commission continued its efforts to improve the proxy voting system by proposing amendments to the rules governing proxy solicitations to help ensure that investors who use proxy voting advice businesses receive accurate, transparent and complete information on which to base their voting decisions.<sup>14</sup> The proposed amendments would, among other things, enhance the quality of the disclosure about material conflicts of interests that proxy voting advice businesses provide their clients. The proposal would also provide registrants and other soliciting persons an opportunity to review and provide feedback on proxy voting advice before it is issued. Importantly, though, the proposed process would leave the content of the proxy voting advice entirely within the discretion of the proxy voting advice business, which will be under no obligation to make any revisions to the proxy voting advice simply because an issuer provides comments on the advice. Additionally, the proposal would not create a new liability regime for proxy voting advice businesses.

---

<sup>10</sup> For example, there are now over 13,000 SEC-registered investment advisers with over \$84 trillion in assets under management, and over 8,000 of these investment advisers provide services to retail investors.

<sup>11</sup> See Spotlight on the Proxy Process, available at <https://www.sec.gov/proxy-roundtable-2018>.

<sup>12</sup> See Comments on Statement Announcing SEC Staff Roundtable on the Proxy Process, available at <https://www.sec.gov/comments/4-725/4-725.htm>.

<sup>13</sup> See Press Release 2019-158, SEC Clarifies Investment Advisers' Proxy Voting Responsibilities and Application of Proxy Rules to Voting Advice (Aug. 21, 2019), available at <https://www.sec.gov/news/press-release/2019-158>.

<sup>14</sup> See Press Release 2019-231, SEC Proposes Rule Amendments to Improve Accuracy and Transparency of Proxy Voting Advice (Nov. 5, 2019), available at <https://www.sec.gov/news/press-release/2019-231>.

On the same date, the Commission also proposed amendments to modernize the rule that governs the process for shareholder proposals to be included in the company’s proxy statement.<sup>15</sup> The proposed amendments would replace the current ownership requirements with a tiered approach that would provide three options for demonstrating an ownership stake through a combination of the amount of securities owned and length of time held. The proposal maintains the long-standing \$2,000 minimum ownership threshold for shareholders provided they have owned their shares for three or more years. The proposed amendments also would amend the current resubmission thresholds of 3, 6, and 10 percent—which have not been updated since 1954—to 5, 15, and 25 percent, respectively, and allow companies to exclude shareholder proposals under certain circumstances where shareholder support for the matter has declined. Said another way, if a shareholder cannot get more than 1 in 20—or 5 percent—of its fellow shareholders to support its proposal in the first year, or more than 1 in 4 shareholders after three years of proxy inclusion within a five-year period, that shareholder proposal would be subject to a limited, company-specific time out under the proposed rules.<sup>16</sup>

Our proposals are based on fundamental tenets of our federal securities laws, including providing investors with information that is accurate, not misleading and decision useful.<sup>17</sup> Commission attention, as well as increased transparency and accountability, are long overdue. We welcome additional input on these matters, including suggestions for improving our proposals. More generally, I expect our work to modernize and improve the proxy process to continue.<sup>18</sup>

### ***Facilitating Capital Formation in our Public Markets***

Led by the Division of Corporation Finance (Corporation Finance), the SEC took meaningful steps during FY 2019 to increase the attractiveness of the public markets while maintaining—and in many cases, enhancing—investor protections. Encouraging capital formation in our public markets 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. Additionally, it is my experience, and the view of our Director of Corporation Finance, 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.

*Expanding JOBS Act Benefits.* In 2012, Congress passed the Jumpstart Our Business Startups (JOBS) Act with strong bipartisan support. To encourage more companies to enter our

---

<sup>15</sup> See Press Release 2019-232, SEC Proposes Amendments to Modernize Shareholder Proposal Rule (Nov. 5, 2019), available at <https://www.sec.gov/news/press-release/2019-232>.

<sup>16</sup> Please note that this “time out” does not mean that the shareholder proposal cannot come up again in the future or be submitted to a different company.

<sup>17</sup> See *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976) (“An omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.”).

<sup>18</sup> See U.S. Sec. and Exch. Comm’n Agency Rule List (Fall 2019), available at [https://www.reginfo.gov/public/do/eAgencyMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235](https://www.reginfo.gov/public/do/eAgencyMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235). [hereinafter Fall 2019 Regulatory Flexibility Agenda].

public markets, the JOBS Act provided a new category of companies—emerging growth companies—with a number of accommodations. Since the early 2000s there has been a dramatic shift from companies raising growth capital in our public equity markets to raising growth capital in our private capital markets.<sup>19</sup> Main Street investors have very limited access to our private capital markets and, where they do have access, unlike our public capital markets, they often do not sit side-by-side with institutional investors. The JOBS Act was instrumental in slowing down this shift from public markets to private markets. Building on principles underpinning the JOBS Act, over the past two years, the SEC has expanded several of these accommodations to encourage more companies to consider entering the public capital markets without diminishing important investor protections.

This past year, the SEC continued its efforts to increase the attractiveness of the public markets.<sup>20</sup> For example, in September 2019, the Commission expanded a key initiative from the JOBS Act when it adopted a final rule to extend the “test-the-waters” accommodation to all issuers—not just emerging growth companies—allowing them to gauge market interest in a possible initial public offering (IPO) or other proposed registered securities offering by permitting discussions with certain investors prior to the filing of a registration statement. I have seen firsthand how this has benefitted emerging growth companies considering an IPO, as they are able to engage investors earlier to explain their business and obtain feedback in advance of a public offering. Investors and shareholders also benefit, as companies can better determine the appropriate time for an offering, identify information that is important to investors and size and price the offering more effectively.

Continuing to build on the principles of the JOBS Act, the Commission has also taken important steps to permit scaled disclosures for small and medium-sized companies, while maintaining important investor protections. Recognizing that one size does not fit all for the regulation of public companies, in May 2019, the Commission proposed amendments to more appropriately tailor the “accelerated filer” and “large accelerated filer” definitions.<sup>21</sup> Under the proposed 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

---

<sup>19</sup> Based on an analysis by staff in the Commission’s Division of Economic and Risk Analysis, in 2018, registered offerings accounted for \$1.4 trillion of new capital compared to approximately \$2.9 trillion that the staff estimates was raised through exempt offering channels. Today: (1) we have roughly half the number of public companies we had twenty years ago; (2) growing companies are staying private substantially longer; and (3) public equity markets are being used more for liquidity by venture capital and private equity investors than for accessing new growth capital. See Remarks to the Economic Club of New York (Sept. 9, 2019), available at [https://www.sec.gov/news/speech/speech-clayton-2019-09-09#\\_ftnref9](https://www.sec.gov/news/speech/speech-clayton-2019-09-09#_ftnref9).

<sup>20</sup> In July 2017, Corporation Finance expanded the draft registration statement submission process to all first-time registrants and newly public companies conducting initial IPOs and offerings within one year of an IPO. These changes were intended to encourage IPOs generally and earlier in the life cycle of growing companies and to give all companies—not just emerging growth companies—more control over their offering schedules, which limits their exposure to market volatility and competitive harm—providing a benefit to their shareholders without diminishing investor protection. Under the new policy, Corporation Finance has received draft submissions for more than 80 IPOs and for more than 175 offerings within one year of an IPO. See also Press Release 2018-297, SEC Adopts Final Rules to Allow Exchange Act Reporting Companies to Use Regulation A (Dec. 19, 2018), available at <https://www.sec.gov/news/press-release/2018-297>.

<sup>21</sup> See Press Release 2019-68, SEC proposes Amendments to More Appropriately Tailor the Accelerated and Large Accelerated Filer Definitions (May 9, 2019), available at <https://www.sec.gov/news/press-release/2019-68>.

from an independent outside auditor. For many smaller companies that received a similar five-year exemption under the JOBS Act, this proposal would extend that exemption until the company exceeded \$100 million in revenues. The Commission is not considering any changes to the Sarbanes-Oxley requirements that apply to smaller reporting companies with respect to independent audit committees, CEO and CFO certifications of financial reporting, or the requirement that they continue to establish, maintain, and assess the effectiveness of their internal control over financial reporting.

*Modernizing Disclosure Requirements; Human Capital Disclosure.* The Commission has also taken a number of actions to simplify and update disclosure requirements in an effort to enhance the quality of information available to investors and reduce costs for registrants.<sup>22</sup> For example, in March 2019, the Commission adopted amendments to modernize and simplify disclosure requirements under Regulation S-K for public companies, investment advisers and investment companies, consistent with its mandate under the Fixing America's Surface Transportation (FAST) Act.<sup>23</sup> In August 2019, the Commission proposed additional amendments to modernize the description of business, legal proceedings and risk factor disclosures that registrants are required to make pursuant to Regulation S-K.<sup>24</sup> The proposal to modernize these core disclosure requirements, among other things, recognizes the significant changes that have taken place in our economy in the last thirty years, including that, in certain industries, intangible assets, and in particular human capital, often are a significant driver of long-term value in today's global economy.

Here, I offer a personal observation. I have had the privilege of being exposed to a wide variety of domestic and international companies over the past 25 years. In my experience, many of the companies that have performed well over time have focused on monitoring and improving their human capital. These companies have approached human capital management in a wide variety of ways, reflecting the characteristics of their industries, markets and size and other largely company-specific, sector-specific and geographic-specific factors. In addition, as the domestic and global economies have evolved, the importance of human capital to performance and, accordingly, investor decision making in higher growth sectors appears to have increased. I believe investors benefit from understanding the various ways registrants monitor and enhance their human capital and welcome comments on our proposal.

We expect efforts to modernize, improve and simplify disclosure requirements to continue in the coming year.<sup>25</sup> I believe these measures have the potential to save issuers

---

<sup>22</sup> See, e.g., Press Release 2019-179, SEC Proposes Rules to Update Statistical Disclosures for Banking Registrants (Sept. 17, 2019), available at <https://www.sec.gov/news/press-release/2019-179>; Press Release 2019-65, SEC Proposes to Improve Disclosures Relating to Acquisitions and Dispositions of Businesses (May 3, 2019), available at <https://www.sec.gov/news/press-release/2019-65>.

<sup>23</sup> See Press Release 2019-38, SEC Adopts Rules to Implement FAST Act Mandate to Modernize and Simplify Disclosure (Mar. 20, 2019), available at <https://www.sec.gov/news/press-release/2019-38>.

<sup>24</sup> See Press Release 2019-148, SEC Proposes to Modernize Disclosures of Business, Legal Proceedings, and Risk Factors Under Regulation S-K (Aug. 8, 2019), available at <https://www.sec.gov/news/press-release/2019-148>.

<sup>25</sup> In the coming year, I expect the Commission will consider final amendments to simplify and streamline certain financial disclosure requirements for guaranteed debt offerings and significant acquisitions and dispositions. Additionally, SEC staff is developing proposals to modernize and streamline disclosures provided to investors, including MD&A, Selected Financial Data and Supplementary Financial Information. See Fall 2019 Regulatory Flexibility Agenda, *supra* note 18.

significant time and expense, enhance the quality of disclosure and increase investor protection. While some of these rule changes may appear technical, I anticipate that, collectively, they will yield substantial benefits for public companies and investors, both in themselves and when taken together with other capital formation initiatives at the Commission.

*Long-Term Performance and Quarterly Reporting.* Another important issue under consideration is how to foster (or not undermine) a longer-term performance perspective in companies, including for the benefit of long-term Main Street investors. These important investors are increasingly responsible for funding their own retirement and other financial needs, and we should be examining both whether the companies they invest in have a similar perspective on their performance horizon and whether our regulations are inappropriately or unnecessarily affecting that perspective. In December 2018, the Commission published a request for comment soliciting input on the nature, content and timing of earnings releases and quarterly reports made by reporting companies and specifically asked for comments on whether and how our reporting system may be causing companies to focus their time and resources disproportionately on short-term results.<sup>26</sup> In July 2019, the SEC staff held a roundtable to hear from investors, issuers and other market participants on these issues.<sup>27</sup> I was pleased with the diverse views and ideas shared on market-based initiatives and regulatory changes that could foster a longer-term performance perspective in companies for the benefit of America’s Main Street investors.

### ***Private Offering Harmonization and Small Business Capital Formation***

The Commission has also been focused in FY 2019 on initiatives to facilitate access to capital for smaller issuers before they enter the public markets. We also are committed to ensuring that our Main Street investors continue to have the best possible mix of investment opportunities. These are related issues. In June 2019, the Commission issued a concept release that seeks comment on possible ways to simplify, harmonize and improve the exempt offering framework to expand investment opportunities and promote capital formation while maintaining appropriate investor protections.<sup>28</sup> While Congress and the SEC have taken a number of steps to expand the options for small businesses to raise capital—most notably in the JOBS Act and related rules—these changes have been introduced over time, leading to a patchwork of rules and exemptions. There has not been a comprehensive review of our exempt offering framework to ensure that the system, as a whole, is rational, accessible and effective. The concept release brings these topics to the forefront.

Our private markets have become increasingly important and are now often seen as more attractive for companies and professional investors than our public markets, in terms of amounts of capital raised, investment opportunities and returns, among other metrics. However, the private market regulatory framework—one that is heavily reliant on our wealth-based definition

---

<sup>26</sup> See Press Release 2018-287, SEC Solicits Public Comment on Earnings Releases and Quarterly Reports (Dec. 18, 2018), available at <https://www.sec.gov/news/press-release/2018-287>.

<sup>27</sup> See Press Release 2019-117, SEC Staff to Host July 18 Roundtable on Short-Term/Long-Term Management of Public Companies, our Periodic Reporting System and Regulatory Requirements (July 2, 2019), available at <https://www.sec.gov/news/press-release/2019-117>.

<sup>28</sup> See Press Release 2019-97, SEC Seeks Public Comment on Ways to Harmonize Private Securities Offering Exemptions (June 18, 2019), available at <https://www.sec.gov/news/press-release/2019-97>.

of “accredited investor”—is rooted in the markets, technology and employment and professional relationships that existed thirty or more years ago. As a result, access to potentially attractive investment opportunities for Main Street investors who do not meet those wealth standards is limited and, where it is available, costly. Additionally, the private offering framework often does not function well for small and medium-sized companies seeking to grow beyond the start-up stage, particularly those that do not have established relationships with professional investors.

I expect the Commission to consider staff recommendations to amend the accredited investor definition in the near future, including whether the definition should include non-wealth-based ways for individuals to qualify, and more broadly, whether the limitations on who can invest in certain exempt offerings provide an appropriate level of investor protection or pose an undue obstacle to capital formation or investor access to investment opportunities. Additionally, I believe it is our obligation 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 can facilitate Main Street investor access to private investments.<sup>29</sup> I believe it is important to focus on solutions that provide access to investment opportunities on substantially the same terms as those that would be available to institutional investors.

In addition, I expect the Commission will consider a proposal to modernize rules relating to the exemption that permits private companies to issue securities as compensation to employees, consultants and advisors, building upon our amendments to the rule as required by the Economic Growth, Regulatory Relief, and Consumer Protection Act.<sup>30</sup> The so-called “gig economy” has changed how companies and individuals design alternative work arrangements, and we should ensure our regulatory framework reflects changes in our marketplace, including our labor markets.

### ***Modernizing Asset Management Regulations***

*ETF Regulatory Framework.* Another important modernization initiative the Commission completed this year concerns exchange-traded funds (ETFs). Since 1992, the Commission has issued more than 300 individualized, exemptive orders allowing ETFs to operate under the Investment Company Act. During that same period, ETFs have grown substantially; today there are approximately 2,000 ETFs with over \$3.7 trillion in total net assets. As the ETF industry continues to grow in size and importance, particularly to Main Street investors, it is important to have a consistent, transparent and efficient regulatory framework that eliminates regulatory hurdles while maintaining appropriate investor protections. To that end, in September 2019, the Commission adopted a new rule and form amendments designed to modernize the regulation of ETFs by establishing a clear and consistent framework for the vast majority of ETFs operating today.<sup>31</sup> In my view, this action will facilitate greater competition

---

<sup>29</sup> See Remarks at Meeting of the SEC’s Small Business Capital Formation Advisory Committee (Nov. 12, 2019), available at <https://www.sec.gov/news/public-statement/clayton-remarks-small-business-capital-formation-advisory-committee-111219>.

<sup>30</sup> See Fall 2019 Regulatory Flexibility Agenda, *supra* note 18.

<sup>31</sup> See Press Release 2019-190, SEC Adopts New Rule to Modernize Regulation of Exchange-Traded Funds (Sept. 26, 2019), available at <https://www.sec.gov/news/press-release/2019-190>.

and innovation in the ETF marketplace and will allow ETFs meeting certain standardized conditions to come to market more quickly without the time or expense of applying for individual exemptive relief, leading to more choice for investors.

As the Commission modernizes the regulatory framework for ETFs with the new rule and related amendments for more standardized ETFs, opportunities to consider novel ETFs and other products or innovations in fund operations remain. Product innovations often depend on the flexibility of the Investment Company Act to accommodate new ideas and choice while preserving investor protections. For example, the Commission has recently approved, and issued notices of intent to approve, several novel types of actively-managed ETFs.<sup>32</sup> In addition, in October 2019, the Commission proposed amendments to modernize the exemptive relief process and make it more efficient and transparent.<sup>33</sup> The proposed changes are intended to grant relief as efficiently and quickly as possible, while ensuring that applications continue to be carefully analyzed consistent with the relevant statutory standards. A more efficient application process would allow applicants to realize the benefits of relief more quickly, making the application process less expensive and would allow the Commission to devote resources to the review of more novel requests. In my view, these amendments will provide important benefits to funds and their shareholders, foster financial innovation and increase the diversity of opportunities for investors, all while maintaining important safeguards of the Investment Company Act.

*Investment Adviser Advertising and Solicitations.* Consistent with our focus on modernization, in November 2019, the Commission proposed amendments to the rules governing investment adviser advertisements and payments to solicitors to reflect changes in technology, investor expectations and the evolution of industry practice.<sup>34</sup> These rules provide important protections when advisers seek to attract clients and investors, yet they have not been updated in a comprehensive way since their adoption in 1961 and 1979, respectively. Meanwhile, our markets, technology and the information investors want—both in form and in content—have evolved significantly. The proposed amendments would replace the current advertising rule’s broadly drawn limitations with principles-based provisions and expand the solicitation rule to cover arrangements involving all forms of compensation, rather than only cash, subject to a new de minimis threshold. These proposals are designed to address market developments and improve the quality of information available to investors, enabling them to make more informed choices. In connection with the proposed amendments, the Commission is specifically seeking feedback from investors and smaller advisers through the use of two short-form feedback flyers.

---

<sup>32</sup> See T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc., Investment Company Act Release No. 33685 (Nov. 14, 2019), available at <https://www.sec.gov/rules/ic/2019/ic-33685.pdf>; Natixis ETF Trust II, et al., Investment Company Act Release No. 33684 (Nov. 14, 2019), available at <https://www.sec.gov/rules/ic/2019/ic-33684.pdf>; Fidelity Beach Street Trust, et al., Investment Company Act Release No. 33683 (Nov. 19, 2019), available at <https://www.sec.gov/rules/ic/2019/ic-33683.pdf>; Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Release No. 33682 (Nov. 14, 2019), available at <https://www.sec.gov/rules/ic/2019/ic-33682.pdf>; Precidian ETFs Trust, et al., Investment Company Act Release No. 33477 (May 20, 2019), available at <https://www.sec.gov/rules/ic/2019/ic-33477.pdf>.

<sup>33</sup> See Press Release 2019-219, SEC Proposed Amendments to Exemptive Applications Procedures (Oct. 18, 2019), available at <https://www.sec.gov/news/press-release/2019-219>.

<sup>34</sup> See Press Release 2019-230, SEC Proposes to Modernize the Advertising and Cash Solicitation Rules for Investment Advisers (Nov. 4, 2019), available at <https://www.sec.gov/news/press-release/2019-230>.

*Use of Derivatives by Mutual Funds, ETFs, Closed-End Funds and BDCs.* Today, funds follow a broad variety of investment strategies and provide diverse investment opportunities for fund investors. As funds' strategies have become increasingly diverse, funds' use of derivatives has grown in both volume and complexity over the past several decades. The existence, use, benefits and risks of these products were not contemplated when the Investment Company Act was enacted. Over the past several decades, extensive changes have taken place in our capital markets and the fund industry, including the importance of derivatives in effective portfolio management.

Last month, the Commission proposed a new rule designed to enhance the regulation of the use of derivatives by registered investment companies, including mutual funds, ETFs and closed-end funds, as well as business development companies. The proposed rule would provide an updated and more comprehensive approach to the regulation of funds' derivatives use.<sup>35</sup> Under the proposed rule, funds would be permitted to enter into derivatives transactions and certain other transactions, notwithstanding the restrictions on indebtedness under the Investment Company Act, provided that the funds comply with certain conditions designed to protect investors. These include adopting a derivatives risk management program and complying with a limit on the amount of leverage-related risk that the fund may obtain (based on value-at-risk). The proposed rule would include a streamlined set of requirements for funds that use derivatives in a limited way. Certain registered investment companies that seek to provide leveraged or inverse exposure to an underlying index—including leveraged ETFs—would not be subject to the proposed limit on fund leverage risk but instead would be subject to alternative requirements under the Commission's proposal, which includes limiting the investment results to 300 percent of the return (or inverse of the return) of the underlying index. Additionally, purchases and sales of these funds would be subject to new sales practice rules. By standardizing the framework for funds' derivatives risk management, the proposal would benefit investors, funds and our markets, including by providing for more-effective risk management across funds and enhanced investor protections.

*Modernizing Fund Disclosures and BDC Offering Reform.* The Division of Investment Management (Investment Management) is leading a long-term project to explore modernization of the design, delivery and content of fund disclosures and other information for the benefit of investors. These initiatives are an important part of how the Commission can serve investors in the 21st century. Fund disclosures are especially important because millions of Americans invest in funds to help them achieve personal financial goals, such as saving for retirement and their children's educations. As of the end of 2018, over 100 million individuals representing nearly 57 million households, or 45 percent of U.S. households, owned funds (generally ETFs or mutual funds).<sup>36</sup>

---

<sup>35</sup> See Press Release 2019-242, SEC Proposes to Modernize Regulation of the Use of Derivatives by Registered Funds and Business Development Companies (Nov. 25, 2019), available at <https://www.sec.gov/news/press-release/2019-242>.

<sup>36</sup> See Investment Company Institute, 2019 Investment Company Fact Book: A Review of Trends and Activities in the Investment Company Industry, 2, 59th ed. 2019.

In June 2018, the Commission issued a request for comment on how to improve fund disclosures for the benefit of Main Street investors.<sup>37</sup> Based on the feedback received from investors regarding the length and complexity of fund disclosures, the staff in Investment Management is considering recommendations to the Commission to improve shareholder reports and the disclosure of fund fees, including options for a shorter and more engaging report that gives shareholders key information to assess and monitor their fund investments. Related to the fund disclosure modernization initiative, in October 2018, the Commission proposed a “summary prospectus” designed to improve disclosure for investors about variable annuity and variable life insurance contracts.<sup>38</sup> The proposal, which mirrors the layered disclosure approach for mutual funds, is another important step in the Commission’s efforts to provide Main Street investors with better information to make informed investment decisions.

Additionally, consistent with congressional mandates under the Small Business Credit Availability Act and the Economic Growth, Regulatory Relief, and Consumer Protection Act, this year, the Commission proposed rule and form amendments to modernize the offerings of BDCs and registered closed-end funds.<sup>39</sup> Specifically, the proposed amendments would modify the registration, communications and offering processes available to BDCs and registered closed-end funds, building on offering practices that operating companies currently use. I expect the Commission to consider final rule recommendations in the coming year.<sup>40</sup>

### ***Modernizing Trading and Market Structure***

*Technology-Driven Changes in Market Structure.* One of our key responsibilities as regulators is to strive to ensure that as technology changes, our regulations continue to drive efficiency, integrity and resilience. As technology and business practices evolve, so must 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. To that end, another focus of the Commission is examining and improving our equity market structure.

Over the past two years, the Commission has completed a number of initiatives designed to help improve and modernize the structure of our equity markets. For example, last year the Commission adopted rules to implement the Transaction Fee Pilot, which is designed to gather data to help us assess whether the rules governing exchange access fees continue to promote fair, orderly and efficient markets.<sup>41</sup> The Commission has also adopted a number of transparency initiatives, including rules designed to promote greater transparency in the broker order routing

---

<sup>37</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>38</sup> See Press Release 2018-246, SEC Proposes Disclosure Improvements for Variable Annuities and Variable Life Insurance Contracts (Oct. 30, 2018), available at <https://www.sec.gov/news/press-release/2018-246>.

<sup>39</sup> See Press Release 2019-39, SEC Proposes Offering Reforms for Business Development Companies and Registered Closed-End Funds (Mar. 20, 2019), available at <https://www.sec.gov/news/press-release/2019-39>.

<sup>40</sup> See Fall 2019 Regulatory Flexibility Agenda, *supra* note 18.

<sup>41</sup> See Press Release 2018-298, SEC Adopts Transaction Fee Pilot for NMS Stocks (Dec. 19, 2018), available at <https://www.sec.gov/news/press-release/2018-298>.

practices and in alternative trading systems.<sup>42</sup> Led by the Division of Trading and Markets (Trading and Markets), these modernization efforts have continued over the past year.

*Thinly Traded Securities.* The quality of our markets for thinly traded securities is one area in particular that I believe is in need of review. Last year, staff from the Division of Trading and Markets (Trading and Markets) held a roundtable where participants representing a wide spectrum of viewpoints discussed the particular challenges facing companies and investors in this segment of the market.<sup>43</sup> A key takeaway we heard from issuers, exchanges and other market participants is that a one-size-fits-all approach to equity market structure may not work for many of our public issuers, particularly small and medium-sized companies. To that end, in October 2019, the Commission issued a statement inviting exchanges and other market participants to submit innovative proposals designed to improve the secondary market structure for these securities, including proposals for market structure innovations in conjunction with the potential suspension or termination of unlisted trading privileges and possible exemptive relief from Regulation NMS and other rules under the Exchange Act.<sup>44</sup> I look forward to seeing proposals geared to enhance trading and liquidity for this segment of the market while maintaining or improving market integrity.

*Market Data.* The SEC is also evaluating options for addressing issues related to the dissemination of and access to market data. At last year's market data and market access roundtable, a key topic was the evolution in recent years of market data products and market access services, both those provided by the central securities information processors (SIPs) and those provided directly by national securities exchanges.<sup>45</sup> In October 2019, the Commission proposed to amend Rule 608 of Regulation NMS to rescind a provision that allows a proposed amendment to a national market system plan to become effective upon filing if the proposed amendment establishes or changes a fee or other charge.<sup>46</sup> If the proposal is adopted, these SIP data fees, as well as all other NMS plan fees, would first provide an opportunity for public comment prior to effectiveness. In the coming year, I expect the Commission to continue to consider issues surrounding infrastructure, governance and transparency in the areas of market data distribution and market access.<sup>47</sup>

*OTC Equities and the "PiggyBack" Exception.* 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

---

<sup>42</sup> See Press Release 2018-136, SEC Adopts Rules to Enhance Transparency and Oversight of Alternative Trading Systems (Jul. 18, 2018), available at <https://www.sec.gov/news/press-release/2018-136>.

<sup>43</sup> See Press Release 2018-65, SEC Staff to Host Roundtable on Market Structure for Thinly-Traded Securities (Apr. 13, 2018), available at <https://www.sec.gov/news/press-release/2018-65>.

<sup>44</sup> See Press Release 2019-217, SEC Issues Statement on Market Structure Innovation for Thinly Traded Securities (Oct. 17, 2019), available at <https://www.sec.gov/news/press-release/2019-217>.

<sup>45</sup> See Press Release 2018-210, SEC Staff to Host Roundtable on Market Data and Market Access (Sep. 24, 2018), available at <https://www.sec.gov/news/press-release/2018-210>.

<sup>46</sup> See Press Release 2019-204, SEC Proposes to Require Proposed NMS Plan Fee Amendments to Follow Public Notice, Comment, and Approval Procedure (Oct. 1, 2019), available at <https://www.sec.gov/news/press-release/2019-204>.

<sup>47</sup> See Fall 2019 Regulatory Flexibility Agenda, *supra* note 18; see also Chairman Jay Clayton and Brett Redfearn, Director, Division of Trading and Markets, Equity Market Structure 2019: Looking Back and Moving Forward, Remarks at Gabelli School of Business, Fordham University (Mar. 8, 2019), available at <https://www.sec.gov/news/speech/clayton-redfearn-equity-market-structure-2019>.

in addition to efforts to detect and address fraudulent conduct through enhanced examination and enforcement programs, the Commission also has taken steps to be more proactive in protecting retail investors from incidents of fraud and manipulation in OTC securities. At the 2018 roundtable to discuss initiatives to combat retail fraud, participants questioned the effectiveness of Rule 15c2-11, which mandates what actions broker-dealers must take prior to publishing quotations for securities that do not trade on a national securities exchange and which has not been updated since before it was commonplace to distribute disclosure materials and quotations electronically.<sup>48</sup> In particular, participants raised significant concerns about the rule's piggyback exception, which allows broker-dealers to publish quotations for a security based on the quotations of a broker-dealer that initially performed the required information review. The lack of current, publicly available information about a company allowed by this exception may particularly disadvantage retail investors. In September 2019, the Commission proposed a rule designed to update Rule 15c2-11 to more effectively protect retail investors from fraud and manipulation in these types of securities transactions.<sup>49</sup> Put simply, these amendments to Rule 15c2-11 are intended to improve issuer disclosures and make it easier to detect, deter and prevent fraud in our OTC markets. I believe attention to these issues will prevent harm to investors, enhance capital formation and is long overdue.

*Fixed Income Market Structure and the FIMSAC.* Our fixed income markets are also critical to our economy and our Main Street investors, though, historically, substantially less attention has been focused on the structure of these markets relative to the equity markets. With large numbers of Americans retiring every month and needing investment options, fixed income products are increasing in their importance to Main Street investors. Yet, many of those investors may not appreciate that the markets for fixed income products differ significantly from the equity markets.

The Fixed Income Market Structure Advisory Committee (FIMSAC), formed in 2017, has provided the Commission with diverse perspectives on the structure and operations of the U.S. fixed income markets, as well as advice and recommendations on matters related to fixed income market structure.<sup>50</sup> Since its inception, the FIMSAC has made ten recommendations on nine topics. These recommendations include ideas to improve transparency and promote liquidity for both institutional and retail investors in the corporate bond and municipal securities markets, to rethink the way we regulate electronic trading and to improve investor education about fixed income products, among others.<sup>51</sup> As reflected in its most recent meeting on November 4, 2019, the FIMSAC continues to consider significant fixed income topics, including

---

<sup>48</sup> See Press Release 2018-200, SEC Staff to Host Roundtable on Regulatory Approaches to Combating Retail Investor Fraud (Sep. 18, 2018), available at <https://www.sec.gov/news/press-release/2018-200>.

<sup>49</sup> See Press Release 2019-189, SEC Proposes Amendments to Enhance Retail Investor Protections – Actions Increase Availability of Issuer Information and Modernize the Rule Governing Quotations for Over-the-Counter Securities (Sep. 26, 2019), available at <https://www.sec.gov/news/press-release/2019-189>.

<sup>50</sup> See Press Release 2017-209, SEC Announces the Formation and First Members of Fixed Income Market Structure Advisory Committee (Nov. 9, 2017), available at <https://www.sec.gov/news/press-release/2017-209>. The FIMSAC currently has five subcommittees: (1) Corporate Bond Transparency; (2) Municipal Securities Transparency; (3) ETFs and Bond Funds; (4) Technology and Electronic Trading; and (5) Credit Ratings.

<sup>51</sup> See Fixed Income Market Structure Advisory Committee, available at <https://www.sec.gov/spotlight/fixed-income-advisory-committee>.

rating agency compensation models, index construction and LIBOR transition.<sup>52</sup> In order to give the FIMSAC adequate time to engage with the Financial Industry Regulatory Authority (FINRA) and other interested parties as its recommendations are considered, the FIMSAC's tenure was recently extended for another year.<sup>53</sup> I look forward to continuing to engage with the FIMSAC and its members on initiatives to help improve these markets.

### ***Consolidated Audit Trail***

The implementation of the consolidated audit trail, or CAT, continues to be an important regulatory initiative. The CAT, first proposed in 2012 and mandated by the Commission pursuant to an NMS Plan in 2016, is intended to enhance regulatory oversight of our securities markets. Our equities and options markets operate through multiple exchanges and other venues and the CAT will facilitate cross-market oversight and analysis, thereby improving investor protection and market integrity.

Progress on the CAT has been much slower than initially anticipated due to a number of factors. I believe progress is being made but continued progress will require substantial additional Commission attention and resources. Commission staff has been engaging with the self-regulatory organizations (SROs) with a focus on trying to ensure that project management, resource and governance deficiencies are addressed, including development of a credible and comprehensive work plan with verifiable milestones. In addition, at the beginning of this year, I appointed a senior-level staff person with substantial project management experience to coordinate the Commission's efforts to monitor the development of the CAT.<sup>54</sup>

The SROs have made positive changes to address identified deficiencies in the NMS plan and prior development efforts, including the development of a Master Plan with projected implementation milestones and the appointment of a leadership team that appears to be working cooperatively toward achieving solutions. Also, at our urging, the SROs increased the role of Advisory Committee members and other industry representatives in the implementation process. This increased transparency with the industry appears to have benefited the project overall.

To reduce the likelihood of further unnecessary or unanticipated delays in the implementation of the CAT and to increase the transparency of the implementation process for market participants who must bring their systems into compliance with the CAT, in September 2019, the Commission proposed amendments to the CAT NMS Plan to require the SROs to file with the Commission and to make publicly available an implementation plan and quarterly progress reports.<sup>55</sup> The proposed amendments also would establish provisions designed to introduce financial accountability and promote senior management attention to implementation in order to help ensure the SROs meet certain CAT implementation milestones in a timely fashion.

---

<sup>52</sup> See <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-agenda-110419.htm>.

<sup>53</sup> See Fixed Income Market Structure Advisory Committee, Release No. 34-87482 (Nov. 7, 2019), available at <https://www.sec.gov/rules/other/2019/34-87482.pdf>.

<sup>54</sup> See Press Release 2019-5, SEC Names Manisha Kimmel as Senior Policy Advisor to the Chairman on the Consolidated Audit Trail (Jan. 29, 2019), available at <https://www.sec.gov/news/press-release/2019-5>.

<sup>55</sup> See Press Release 2019-173, SEC Proposes Transparency and Financial Accountability Amendments to the CAT NMS Plan (Sep. 9, 2019), available at <https://www.sec.gov/news/press-release/2019-173>.

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' PII that would be stored in the CAT. The Commission and the SROs must be mindful of the volume of data that the CAT collects and its sensitive nature and be responsible in their collection and use of that data. To that end, I support the SROs' ongoing efforts to address various PII and data protection concerns. The SROs recently submitted a request for an exemption to remove the most sensitive PII—social security numbers, account numbers and full dates of birth—from the CAT. I believe the regulatory objectives of the CAT can be achieved without these most sensitive pieces of investor information. If granted, the only retail investor PII remaining in the CAT would be essentially “phone book” type information—name, address and birth year.

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. 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.<sup>56</sup> Looking ahead, I believe we can and should take additional steps to ensure the security and confidentiality of CAT data, including in response to developments in data systems and cybersecurity. To that end, I expect the Commission will consider data security amendments to the CAT NMS Plan in the coming year.<sup>57</sup> Further, with regard to the use of the CAT by the SEC, as I have previously noted, the SEC will not retrieve any sensitive PII from the CAT unless there is a regulatory need for the information and we are confident that there are appropriate protections in place to safeguard the information.

### ***Distributed Ledger Technology and Digital Assets***

The Commission and its staff continue to focus a significant amount of attention and resources on digital assets. As I have previously stated, I am optimistic that developments in distributed ledger technology can help facilitate capital formation, providing promising investment opportunities for both institutional and Main Street investors. Overall, I believe we have taken a measured, yet proactive regulatory approach that both fosters innovation and capital formation while protecting our investors and our markets.

A significant portion of this work takes place in the SEC's FinHub.<sup>58</sup> FinHub serves as an internal resource within the SEC, coordinating the staff's work on FinTech-related issues across offices and divisions. SEC staff also meets regularly with staff from other regulatory agencies—domestic and international—to coordinate efforts and identify any areas where additional regulatory oversight may be needed. FinHub also serves as a portal for public

---

<sup>56</sup> The security features required by the CAT NMS Plan include, among other things: (1) the encryption of PII and all other CAT data, as well as a System Security Plan; (2) adherence to the NIST 800-53 security standards, a set of security and privacy controls for federal information systems and organizations; (3) incorporation of tools that will enable logging, auditing and access controls for the CAT system; (4) secure methods of connectivity; and (5) development of a Cyber Incident Response Plan.

<sup>57</sup> See Fall 2019 Regulatory Flexibility Agenda, *supra* note 18.

<sup>58</sup> Staffed by representatives from across the Commission, FinHub is intended to serve as a public resource for FinTech-related issues at the SEC, including matters dealing with distributed ledger technology, automated investment advice, digital marketplace financing and artificial intelligence/machine learning.

engagement. In May 2019, FinHub hosted a public FinTech forum focusing on distributed ledger technology and digital assets and explored topics such as ICOs, digital asset platforms and how these technologies impact investors and the markets.<sup>59</sup>

Additionally, FinHub and other SEC staff meet regularly with entrepreneurs and market professionals interested in developing new and innovative investment products in compliance with the federal securities laws, including through local, peer-to-peer meetings across the country. SEC staff has also provided information to help market participants assess whether the federal securities laws apply to a particular digital asset.<sup>60</sup> As the work of FinHub and our other activities demonstrate, the agency is focused on issues presented by new technologies, and our door remains open to those who seek to innovate and raise capital in accordance with the federal securities laws and consistent with important investor protections.<sup>61</sup>

### ***Interagency Efforts and Other Dodd-Frank Rulemakings***

*Completing Title VII Rulemaking and Standing Up the Title VII Framework.* As I have previously testified, we have made finalizing Dodd-Frank's Title VII regulatory regime a priority, and the Commission has made significant progress to that end over the past year. In particular, in June 2019, the Commission adopted capital, margin and segregation rules designed to protect the counterparties of security-based swap dealers and major security-based swap participants, thereby reducing risk to the market as a whole.<sup>62</sup> In September 2019, the Commission also adopted recordkeeping and reporting rules, which will require the creation and retention of fundamental business records that facilitate the Commission's ability to monitor compliance with requirements designed to protect financial responsibility and reduce risk to the market.<sup>63</sup> Finally, the Commission proposed rules to improve the framework for regulating

---

<sup>59</sup> See Press Release 2019-59, SEC Staff Announces Agenda for May 31 FinTech Forum (Apr. 24, 2019), available at <https://www.sec.gov/news/press-release/2019-59>.

<sup>60</sup> For example, FinHub released a framework for investment contract analysis for digital assets, and Trading and Markets, along with FINRA, released a joint staff statement relating to custody of digital assets. See Framework for "Investment Contract" Analysis of Digital Assets, available at <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>; Joint Staff Statement on Broker-Dealer Custody of Digital Asset Securities (July 8, 2019), available at <https://www.sec.gov/news/public-statement/joint-staff-statement-broker-dealer-custody-digital-asset-securities>. Investment Management has also been engaging with the asset management industry on issues related to fund investment in digital assets, including those related to valuation, custody and liquidity, among others. See Staff Letter and Responses on Engaging on Fund Innovation and Cryptocurrency-related Holdings, available at <https://www.sec.gov/investment/fund-innovation-cryptocurrency-related-holdings>.

<sup>61</sup> See, e.g., Response of the Division of Trading and Markets re: Paxos Trust Company, LLC (Oct. 28, 2019), available at <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>; Response of the Division of Corporation Finance re: Pocketsful of Quarters, Inc. (July 25, 2019), available at <https://www.sec.gov/corpfin/pocketful-quarters-inc-072519-2a1>; Response of the Division of Corporation Finance re: TurnKey Jet, Inc. (Apr. 3, 2019), available at <https://www.sec.gov/divisions/corpfin/cf-noaction/2019/turnkey-jet-040219-2a1.htm>.

<sup>62</sup> See Press Release 2019-105, SEC Adopts Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Amends the Capital and Segregation Requirements for Broker-Dealers (June 21, 2019), available at <https://www.sec.gov/news/press-release/2019-105>.

<sup>63</sup> See Press Release 2019-182, SEC Adopts New Rules and Amendments under Title VII of Dodd-Frank (Sept. 19, 2019), available at <https://www.sec.gov/news/press-release/2019-182>.

cross-border security-based swap transactions and market participants,<sup>64</sup> and I expect the Commission will consider final rule recommendations in the near future. If adopted, these amendments would mark an important milestone in standing up Title VII by triggering the implementation period for compliance with the security-based swap regime, as well as the previously adopted reporting and recordkeeping requirements and capital and margin requirements. As part of this effort, SEC staff has been actively engaged with our counterparts at the Commodity Futures Trading Commission (CFTC) to explore ways to further harmonize the Commission’s security-based swap rules with the swap rules developed by the CFTC to increase effectiveness and reduce complexity and costs.<sup>65</sup>

*Addressing Ambiguities and Implementation Difficulties with the Volcker Rule.* In addition to continued discussions with the CFTC regarding Title VII harmonization, the Commission and staff have engaged with our fellow financial regulators—the Federal Reserve, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC) and CFTC (collectively, the Volcker agencies)—to address other issues in our combined markets in a consistent manner. Since the adoption of the Volcker Rule in 2013, the Volcker agencies have gained experience through its implementation, including through examinations. Based on that experience, and in response to feedback received in the course of administering the Volcker Rule, we and the other Volcker agencies identified opportunities—consistent with the statute—for improving its implementation. Recently, the Volcker agencies adopted amendments to the Volcker Rule to tailor its requirements based on the level of a banking entity’s trading activity.<sup>66</sup> These amendments provide greater certainty for banking entities seeking to engage in certain statutorily permitted activities, in addition to clarifying activity that is not permitted under the rule.

Additionally, the amendments effect the changes to the covered funds-related provisions of the Volcker Rule. Specifically, these amendments modify the conditions to certain existing exemptions for permitted activities involving ownership interests in covered funds. As the adopting release made clear, the Volcker agencies are continuing to consider the comments received in response to the 2018 proposal on additional aspects of the covered funds provisions and intend to address those comments in a separate rulemaking. I look forward to working with our colleagues at the other agencies on that endeavor.

In response to congressional directives, the Volcker agencies adopted amendments to exclude community banks from the Volcker Rule, as well as to permit a hedge fund or private equity fund, under certain circumstances, to share the same name or a variation of the same name

---

<sup>64</sup> See Press Release 2019-69, SEC Proposes Actions to Improve Cross-Border Application of Security-Based Swap Requirements (May 10, 2019), available at <https://www.sec.gov/news/press-release/2019-69>.

<sup>65</sup> To further this cooperation, in 2018 the SEC and CFTC executed a memorandum of understanding (MOU), which explicitly acknowledges shared regulatory interests between the agencies—including, but not limited to, Title VII—and reconfirms our commitment to work together to facilitate efficient markets for the benefit of all market participants. See Press Release 2018-114, SEC and CFTC Announce Approval of New MOU (June 28, 2018), available at <https://www.sec.gov/news/press-release/2018-114>.

<sup>66</sup> See Press Release 2019-207, Agencies Finalize Changes to Simplify Volcker Rule (Oct. 8, 2019), available at <https://www.sec.gov/news/press-release/2019-207>.

with an investment adviser as long as the adviser is not an insured depository institution, a company that controls an insured depository institution or a bank holding company.<sup>67</sup>

## **Enforcement and Compliance**

### ***Pursuing Enforcement Matters that are Meaningful to Main Street Investors***

The ongoing efforts by the Division of Enforcement (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. 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.

To that end, in FY 2019, Enforcement investigated and recommended a broad mix of enforcement actions that addressed a variety of misconduct across the spectrum of the securities markets. Overall, the Commission brought 862 enforcement actions and obtained judgments and orders totaling more than \$4.3 billion in disgorgement and penalties, while returning nearly \$1.2 billion to harmed investors.<sup>68</sup> To be sure, as I and our Co-Directors of Enforcement have noted on various occasions, these types of purely quantitative measures alone cannot adequately measure the effectiveness of Enforcement's work, which can be evaluated better 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.

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. In this testimony, I would like to highlight three investor-oriented Enforcement initiatives: (1) the Retail Strategy Task Force (RSTF) and its efforts to protect our teachers, service members and seniors; (2) the Cyber Unit; and (3) Enforcement's work in returning funds to harmed investors.

Since its formation in 2017, the RSTF has continued its innovative work on case-generation initiatives, education and outreach efforts focusing on misconduct affecting retail investors.<sup>69</sup> Recognizing that prevention and enforcement are complementary efforts, the RSTF is working with the SEC's Office of Investor Education and Advocacy (OIEA) on two Commission-wide initiatives: the Teacher's Initiative and the Military Service Members'

---

<sup>67</sup> See Press Release 2019-124, Agencies Adopt Final Rule to Exclude Community Banks from the Volcker Rule (July 9, 2019), available at <https://www.sec.gov/news/pressrelease/2019-124>.

<sup>68</sup> See U.S. Sec. and Exch. Comm'n, Div. of Enforcement Annual Report (2019), available at <https://www.sec.gov/files/enforcement-annual-report-2019.pdf> [hereinafter 2019 Enforcement Report].

<sup>69</sup> The RSTF has two primary objectives: (1) to develop data-driven, analytical strategies for identifying practices in the securities markets that harm retail investors and generating enforcement matters in these areas; and (2) to collaborate within and beyond the SEC on retail investor advocacy and outreach. See Press Release 2017-176, SEC Announces Enforcement Initiatives to Combat Cyber-Based Threats and Protect Retail Investors (Sep. 25, 2017), available at <https://www.sec.gov/news/press-release/2017-176>.

Initiative.<sup>70</sup> Teachers, active duty military and veterans provide a tremendous service to our country, often at great personal and financial sacrifice to themselves and their families. However, they are often targeted and fall victim to securities fraud and other misconduct. These initiatives focus additional enforcement efforts on harmful practices and investment fraud targeted at these communities. The initiative also focuses investor education resources on instructing teachers, veterans and active duty military personnel on savings and investment, including investment fees and expenses, retirement programs specific to educators and service members and identifying the red flags of investment fraud.

Protecting older Americans from investor fraud is another important mission of the RSTF. The SEC is very concerned about financial exploitation of and investment fraud against seniors. Recently, the RSTF held a roundtable on combatting elder investor fraud that focused on the types of fraudulent and manipulative schemes commonly used to target seniors and potential steps that regulators, financial professionals and others can take to identify and combat elder investor fraud.<sup>71</sup>

With its expertise, 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 FinHub on cases involving distributed ledger technology and digital assets. This past year, the Commission has brought actions against a number of issuers of digital assets for allegedly engaging in fraud and for violating the registration provisions of the federal securities laws. The Commission also filed charges related to the unlawful promotion of initial coin offerings (ICOs) and the unlawful operation of a digital asset trading platform.<sup>72</sup> Additionally, the SEC filed an emergency action to block an alleged unregistered, ongoing, public digital token offering in the United States that has raised more than \$1.7 billion of investor funds.<sup>73</sup> Collectively, these actions reflect the Commission's commitment to policing these markets vigorously and to taking enforcement action, as appropriate, against those who engage in misconduct related to digital assets that violates the federal securities laws. 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.

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. We also have continued our efforts to return funds to harmed investors as promptly as practicable. From FY 2017 through FY 2019, the Commission has returned more than \$3 billion to harmed investors, with nearly \$1.2 billion returned this past fiscal year. 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.

---

<sup>70</sup> See Press Release 2019-85, SEC Announces Enforcement and Investor Education Initiatives to Protect Teachers and Military Service Members (June 3, 2019), available at <https://www.sec.gov/news/press-release/2019-85>.

<sup>71</sup> See Press Release 2019-192, SEC Retail Strategy Task Force to Host Roundtable on Combating Elder Investor Fraud (Sep. 26, 2019), available at <https://www.sec.gov/news/press-release/2019-192>

<sup>72</sup> See Cyber Enforcement Actions, available at <https://www.sec.gov/spotlight/cybersecurity-enforcement-actions>.

<sup>73</sup> See Press Release 2019-212, SEC Halts Alleged \$1.7 Billion Unregistered Digital Token Offering (Oct. 11, 2019), available at <https://www.sec.gov/news/press-release/2019-212>.

Reflecting this commitment, in February 2018, Enforcement launched the Share Class Selection Disclosure Initiative, a self-reporting initiative designed to address disclosure failures by investment advisers regarding their conflicts of interest as a result of their receipt of compensation in the form of 12b-1 fees.<sup>74</sup> As part of this initiative, in FY 2019, 95 investment advisory firms voluntarily self-reported to Enforcement and were ordered by the Commission to return a total of over \$135 million to affected investors—the vast majority of whom are retail investors.<sup>75</sup> The voluntary, self-reporting and self-remediation features of this initiative allowed the Commission to leverage its resources to address disclosure failures in a very short period of time, resulting in the immediate benefit of money being ordered returned to harmed investors and the lasting benefit of improved disclosure.

The Supreme Court’s decision in *Kokesh v. SEC*,<sup>76</sup> however, has impacted our ability to return funds fraudulently taken from Main Street investors. In *Kokesh*, the Supreme Court found our use of the disgorgement remedy may have operated as a penalty, which prohibited the Commission from seeking disgorgement of ill-gotten gains beyond the five-year statute of limitations applicable to penalties. Said simply, the *Kokesh* decision has had the anomalous effect of allowing the most “successful” perpetrators of fraud—those whose frauds are well-concealed and stretch beyond the five-year limitations period—to keep their ill-gotten gains. Since *Kokesh* was decided, an estimated \$1.1 billion in ill-gotten gains has been unavailable for possible distribution to harmed investors, much of which is tied to losses by investors.<sup>77</sup> More recently, the SEC’s ability to seek disgorgement in any district court action has been questioned.<sup>78</sup>

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>79</sup> For example, 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. In addition, in our markets, particularly our public markets, the certainty brought by reasonable limitations periods has significant value for all investors.<sup>80</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. 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

---

<sup>74</sup> See Press Release 2018-15, SEC Launches Share Class Selection Disclosure Initiative to Encourage Self-Reporting and the Prompt Return of Funds to Investors (Feb. 12, 2018), available at <https://www.sec.gov/news/press-release/2018-15>.

<sup>75</sup> See 2019 Enforcement Report, *supra* note 68.

<sup>76</sup> 137 S. Ct. 1635 (2017).

<sup>77</sup> See *id.*

<sup>78</sup> The U.S. Supreme Court recently granted certiorari in *Liu v. SEC*, No. 18-1501, to address this question.

<sup>79</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.

<sup>80</sup> 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.

fairness and undermines the confidence that our capital markets are fair and efficient and provide Americans with opportunities for a better future.

I greatly appreciate the bipartisan, bicameral work underway to address this issue, and I welcome the opportunity to continue to work with Congress to 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.<sup>81</sup>

### ***Protecting Investors and Improving Investment Options by Promoting Compliance***

The SEC's Office of Compliance Inspections and Examinations (OCIE) is responsible for conducting examinations of entities registered with the SEC, including more than 13,400 investment advisers, approximately 10,000 mutual funds and ETFs, roughly 3,700 broker-dealers, about 350 transfer agents, seven active clearing agencies, 23 national securities exchanges, nearly 550 municipal advisors, FINRA and the Municipal Securities Rulemaking Board (MSRB), as well as the Securities Investor Protection Corporation and the Public Company Accounting Oversight Board (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 2019 Examination Priorities reflect a continued focus on the SEC's commitment to protecting retail investors—including seniors and those saving for retirement.<sup>82</sup> In particular, OCIE has looked closely at 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, including compliance and risks in critical market infrastructure, cybersecurity and anti-money laundering programs. OCIE also publishes a number of risk alerts to inform registered firms and investors of common compliance issues to aid in the identification and correction of potentially deficient practices to better protect the interests of Main Street investors. During FY 2019, OCIE published eight risk alerts—the most risk alerts in a year since we began publishing them in FY 2011.<sup>83</sup>

During FY 2019, OCIE conducted over 3,075 examinations, a slight decrease from FY 2018.<sup>84</sup> This includes a 15 percent coverage ratio for investment advisers—up from 10 percent five years ago, even as the number of registered investment advisers continues to grow. In FY 2019, OCIE's examinations also resulted in firms returning more than \$70 million thus far in recoveries. Staff will continue to leverage data analysis to identify potentially problematic

---

<sup>81</sup> See S. 799, the Securities Fraud Enforcement and Investor Compensation Act of 2019; S. 2563, the Illicit Cash Act; and H.R. 4344, the Investor Protection and Capital Markets Fairness Act, which passed the U.S. House of Representatives with bipartisan support on November 18, 2019.

<sup>82</sup> U.S. Sec. and Exch. Comm'n, Off. of Compliance Inspections and Examinations, 2019 Nat'l Exam Program Examination Priorities (Dec. 20, 2018), available at <https://www.sec.gov/files/OCIE%202019%20Priorities.pdf>.

<sup>83</sup> See Off. of Compliance Inspections and Examinations Risk Alerts, available at <https://www.sec.gov/ocie>.

<sup>84</sup> Due to the lapse in appropriations in 2019, we have seen a decline in certain FY 2019 metrics as compared to prior years. As such, and as noted earlier with regard to Enforcement, I believe a purely quantitative approach to evaluating performance is insufficient.

activities and firms as well as to determine how best to scope the examinations of those activities and firms.

### **Increasing Engagement with Investors and Market Participants**

In addition to our regulatory agenda, the Commission has another important agenda—what I call our “engagement agenda.” To effectively fulfill our responsibility to American investors and markets, it is essential that the SEC maintain an open line of communication with investors and other market participants. In FY 2019, following on our work in FY 2018, the SEC substantially increased its engagement with investors and an array of market participants to help us improve our work and better focus our resources and efforts.

### ***Empowering Main Street Investors through Education and Outreach***

In addition to strong enforcement of our securities laws, the SEC is fulfilling its mandate through robust investor education and outreach programs to promote informed investment decision-making and provide the investing public 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. Based on my experiences traveling the country and meeting with investors, two common themes have emerged, regardless of demographics or geography: investors wish (1) they had started investing earlier in our markets; and (2) they had known more about investing and financial markets more generally. The sentiment, which was universal and deeply held, continues to resonate with me—and I intend to continue to work to address them—during my tenure as Chairman. As part of this, we will continue to hold additional town hall-style meetings with Main Street investors in 2020.

OIEA spearheads our investor education efforts, and participation extends throughout our divisions and offices. Through its “Before You Invest, Investor.gov” public service campaign, OIEA is focused on empowering retail investors through information and education, including raising awareness about Investor.gov and helping individuals protect themselves from investment fraud. The SEC’s investor education platform covers a wide variety of subjects and uses multiple communication channels. In addition to in-person outreach, the Commission is modernizing our educational efforts by developing informative, innovative and accessible educational initiatives designed to reach more people sooner, including through digital and social media. We also partner with advocates who are providing important feedback on our content so that we can reach the broadest cross-section of our society.

In FY 2019, SEC staff across the country participated in over 500 in-person outreach events. This outreach included events targeted for senior citizens, educators, current and former military personnel, younger investors and other traditionally underserved communities. For example, as part of the Teachers Initiative discussed above, the Commission has launched several teacher investment outreach efforts nationwide with a focus on educators, including a podcast series, local events at schools and seminars, as well as a conference on investment challenges facing educators and ideas for improvement. SEC staff frequently engages with the public in various locations, including community centers and libraries. 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***

Our capital markets are far different today than they were a decade ago. They are increasingly global and highly data dependent. Investments are channeled through intermediaries and vehicles, such as mutual funds and ETFs, to a much greater extent. Our markets also are ever changing and the pace of that change has increased. It is essential that the SEC understand the markets of today and continually prepare for and adjust to market developments. As a result, engagement with those who participate in our markets extensively, including public and private companies, institutional investors, broker-dealers and auditors, as well as those who monitor and oversee markets, including U.S. and foreign authorities,<sup>85</sup> elected officials, analysts and academics, is essential.

Recognizing that asset management is a critical component of our markets and is especially important to Main Street investors, in October 2019, the Commission formed a new Asset Management Advisory Committee to provide the Commission with diverse perspectives on asset management and related advice and recommendations.<sup>86</sup> This Committee will help the Commission ensure that our regulatory approach to asset management meets the needs of retail investors and market participants at a time when the industry is evolving rapidly.

Engaging with America's entrepreneurs is also important to our mission, including, in particular, our capital formation mandate. In December 2018, our first Advocate for Small Business Capital Formation was appointed to oversee the SEC's newest office dedicated to advancing the interests of small businesses and their investors at the SEC and in our capital markets.<sup>87</sup> The SEC's Office of the Advocate for Small Business Capital Formation (OASB) 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 August 2019, OASB hosted the SEC's 38<sup>th</sup> annual Government-Business Forum on Small Business Capital Formation (Forum), preceded by the second meeting of the Small Business Capital Formation Advisory Committee, in Omaha, Nebraska.<sup>88</sup> All five Commissioners attended and participated in the Forum, which provided an opportunity to hear from entrepreneurs, investors and other market participants on capital formation in the heartland.

---

<sup>85</sup> The SEC plays an active role and contributes to and benefits from participation in various domestic and international organizations that focus on market and systemic risks, including the Financial and Banking Information Infrastructure Committee (FBIIC), Global Financial Innovation Network (GFIN); Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO). As Chairman, I am also a member of the Financial Stability Oversight Council (FSOC). In addition to engagement with these and other organizations, we also directly coordinate and share information and observations on almost a daily basis with our domestic regulatory counterparts at the Treasury Department, the CFTC and the Federal Reserve, among others.

<sup>86</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>87</sup> See Press Release 2018-304, Martha Miller Named Advocate for Small Business Capital Formation (Dec. 21, 2018), available at <https://www.sec.gov/news/press-release/2018-304>.

<sup>88</sup> See SEC's 38th Annual Government-Business Forum on Small Business Capital Formation (Aug. 14, 2019), available at <https://www.sec.gov/oasb/sbforum>.

Last week, the SEC released the Annual Report from the Forum, and I am pleased the SEC has many of the report's recommendations under consideration.<sup>89</sup>

OASB has led over 20 outreach events in its first year, from roundtables to town halls to keynote speeches, in addition to one-on-one engagements. These events, which have included targeted outreach to women, minority, veteran-owned and rural businesses, empower small businesses and their investors by providing opportunities to impact policy and give feedback on ways the SEC can support capital formation. OASB also initiated a series of short videos available online that provide a high-level summary of recent SEC rulemakings, as well as how to comment on rules more generally.<sup>90</sup> By engaging small businesses and their investors, the SEC is engaging broader and more diverse voices to ensure capital formation opportunities are available to everyone.

Additionally, 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.

### ***Engagement with and Oversight of Self-Regulatory Organizations***

The SEC has oversight of SROs such as FINRA and the Municipal Securities Rulemaking Board (MSRB), as well as the Public Company Accounting Oversight Board (PCAOB). The work of these and other oversight organizations is important to the functioning of our markets and, in particular, investor protection. For example, this past year, SEC staff in Trading and Markets and OCIE—who have day-to-day oversight of FINRA—have been working closely with FINRA on the implementation of Regulation Best Interest and a number of other matters, including the CAT. The Office of Municipal Securities primarily has day-to-day oversight of the MSRB, and over the past year, I have increased my direct attention to MSRB oversight, including meeting with several of the new Board members. With regard to our oversight of the PCAOB, the Commission exercises oversight responsibilities with respect to the PCAOB in accordance with the Sarbanes-Oxley Act, which includes approval of rules and standards adopted by the PCAOB and the approval of the PCAOB's budget, in addition to significant Board oversight. The PCAOB has faced significant challenges for some time, and while progress is being made, key challenges remain. To that end, my fellow Commissioners and I have increased our direct attention to the oversight of the PCAOB in recent months.

### **Monitoring Market Developments and Risks**

Consistent with past practice, I want to close by discussing just a few of the market development and risks that we are monitoring closely at the Commission. As our markets continue to evolve, new issues and risks continually emerge, and the Commission and staff

---

<sup>89</sup> See Press Release 2019-252, SEC Releases Report on 38<sup>th</sup> Annual Small Business Forum (Dec. 5, 2019), available at <https://www.sec.gov/news/press-release/2019-252>. In accordance with Section 503 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (Public Law 115-174), this Annual Report includes Commission responses to this year's Forum recommendations.

<sup>90</sup> See Small Business Capital Formation Video Gallery, available at <https://www.sec.gov/page/oasb-videos>.

across our divisions and offices must stay abreast of these changes and respond appropriately to ensure that all investors, importantly Main Street investors, have access to fair and efficient capital markets. In recognition of the SEC's role in this area, earlier this year, I created a new position, the Senior Policy Advisor for Market and Activities-Based Risk, to manage and coordinate SEC efforts to identify, monitor and respond to market risks, including activities-based risks. In addition to leading and coordinating our risk monitoring and management work, this position will enable us to work more effectively with and contribute to the efforts of the FSOC, including in respect of FSOC's activities-based approach to identifying and addressing potential risks to U.S. financial stability.

Speaking more generally, our strong relationships with our domestic and international regulatory partners have been especially beneficial as we continually monitor and respond to changes to global markets that will affect investors, market participants and our capital markets. We work very closely with staff at the Treasury Department, CFTC, Federal Reserve, OCC, and FDIC, among others, on a wide range of regulatory and market risk issues. I am grateful to Secretary Mnuchin, Chairman Powell, Vice Chairman Quarels, Chairman McWilliams, Chairman Tarbert, Comptroller Otting and our other federal financial regulatory colleagues for their openness to cooperation and their demonstrated support for the Commission's mission. On the international front, the Commission plays a significant role in the work of the FSB and IOSCO, where current topics of discussion include: (1) the increase in global government, corporate and consumer debt generally and the relative shift in debt holdings from bank balance sheets to capital markets participants; (2) the digitization of financial markets including the potential digitization of currencies; and (3) the potential effects of macroeconomic trends and factors that may have broad effects on markets, including the continuation of accommodative monetary policy, climate change, data dependency and related cyber risks and Brexit.

*Brexit.* Regarding Brexit, the Commission and SEC staff have been closely monitoring Brexit and its potential impacts on U.S. markets and investors, and more broadly, on global financial markets. The SEC's responsibility is primarily related to the impact of Brexit on U.S. capital markets, and SEC staff has been focusing on the disclosures companies and advisers make related to Brexit and the functioning of our market utilities and other infrastructure.<sup>91</sup> As the target date for Brexit approaches, we will continue to monitor and plan for potential Brexit-related impacts on U.S. investors and markets.

*MiFID II.* Another area of focus has been the European Union's Markets in Financial Instruments Directive II (MiFID II), which changed how asset managers could pay for research in the European Union, and in turn, has also raised questions concerning market practice and compliance among broker-dealers and asset managers in the United States. The impacts of MiFID II are evolving, and SEC staff has been actively engaging with market participants, as well as European authorities, on MiFID II's effect on the business practices of investment advisers and broker-dealers and its impact on the quality and availability of research, particularly with respect to small issuers. In 2017, Commission staff issued a series of no-action letters regarding market participants' U.S. regulated activities as they engaged in efforts to comply with MiFID II, and last month, the time frame of the staff's no-action position was extended until July

---

<sup>91</sup> See SEC Rulemaking Over the Past Year, the Road Ahead and Challenges Posed by Brexit, LIBOR Transition and Cybersecurity Risks (Dec. 6, 2018), available at <https://www.sec.gov/news/speech/speech-clayton-120618>.

2023.<sup>92</sup> This temporary extension will provide market participants with greater certainty while the SEC—as well as European regulators—continue to monitor and assess MiFID II’s evolving impact and evaluate whether any additional guidance or regulatory actions are appropriate, and while market-based solutions with respect to payments for research evolve further. We welcome continued engagement from market participants on this issue.

*LIBOR Transition.* The SEC has increased its attention to issues raised by the expected transition away from LIBOR as a benchmark for short-term interest rates, including market function and investor protection risks. As LIBOR is used extensively in the U.S. and globally as a benchmark rate to set interest rates for various commercial and financial contracts, the discontinuation of LIBOR at the end of 2021 could have a significant impact on financial markets and may present a material risk for market participants, including public companies, exchanges, clearing agencies, investment advisers, investment companies and broker-dealers. In July 2019, staff from multiple SEC divisions and offices published a statement encouraging market participants to proactively manage their transition away from LIBOR and outlined several potential areas that may warrant increased attention during that time.<sup>93</sup> As I have stated on multiple occasions, market participants should assess their exposure to LIBOR and decide how to actively manage that risk, which includes ensuring that any contracts that extend beyond 2021 either (1) reference LIBOR and have effective fallback language; or (2) do not reference LIBOR.<sup>94</sup>

More recently, I have asked the FIMSAC to continue to monitor this issue and provide the Commission with their views on the issues we face in facilitating the transition away from LIBOR, particularly for instruments and products that have: (1) maturity dates beyond the expected LIBOR phase-out date; (2) do not have effective fallback language; and (3) from a practical perspective, could be difficult for parties to reach an agreement on an alternative rate.<sup>95</sup> We welcome continued engagement with, and input from, market participants as we continue to address the various issues presented by the expected discontinuation of LIBOR.

*Debt Markets.* Another area we are monitoring is the corporate debt markets and leveraged lending, including funds and products that invest in leveraged loans. Global debt now totals at least \$246.5 trillion, or 320 percent of the world’s GDP.<sup>96</sup> Focusing on the United States and corporate debt specifically, outstanding nonfinancial corporate debt stands at almost

---

<sup>92</sup> See Press Release 2019-229, SEC Announces Extension of Temporary Measure to Facilitate Cross-Border Implementation of the European Union’s MiFID II’s Research Provisions (Nov. 4, 2019), available at <https://www.sec.gov/news/press-release/2019-229>.

<sup>93</sup> See Press Release 2019-129, SEC Staff Publishes Statement Highlighting Risks for Market Participants as They Transition Away from LIBOR (July 12, 2019), available at <https://www.sec.gov/news/press-release/2019-129>.

<sup>94</sup> To the extent required, risk may need to be disclosed to the market, counterparties and investors.

<sup>95</sup> See Remarks to the SEC Fixed Income Market Structure Advisory Committee (Nov. 4, 2019), available at <https://www.sec.gov/news/public-statement/statement-clayton-fimsac-110419>. I have also asked our Investor Advisory Committee to review these issues and their impact on investors. See Remarks to the SEC Investor Advisory Committee (Nov. 7, 2019), available at <https://www.sec.gov/news/public-statement/clayton-remarks-investor-advisory-committee-110719>.

<sup>96</sup> Alexandre Tanzi, *Global Debt Quickened in First Quarter, Outpacing World Economy* (July 15, 2019), available at <https://www.bloomberg.com/news/articles/2019-07-15/global-debt-accelerated-in-1st-quarter-outpacing-world-economy>.

\$10 trillion and now sits at almost 50 percent of U.S. GDP.<sup>97</sup> Debt securities accounted for approximately 62 percent of money market fund assets (*i.e.*, liquidity-oriented products) as of the first quarter of 2019 and 56 percent as of the second quarter of 2019, near its peak of 64 percent.<sup>98</sup> Global government policy has shifted direct credit exposure from the banking sector to the capital markets sector and indirect credit exposure to new channels. In particular, we have observed a rise in both passive and structured investing in our credit markets, with a significant shift from debt held directly by investors to debt held through funds, including collateralized loan obligations (CLOs).<sup>99</sup>

To be sure, I am not saying that these aggregate debt amounts or the relative shift away from banks to the capital markets are the result of inappropriate policy decisions or in themselves systemic risks. What I am saying is that, in monitoring market risks and economic risks more broadly, we need to be cognizant of these changes. In this regard, modernizing our oversight means recognizing that shift, analyzing what it means for the application of our regulatory tools, and considering whether new or updated monitoring measures and tools are necessary or appropriate and whether old measures and tools should be given less weight or retired. To that end, the Commission has been engaged with our counterparts at other financial regulatory agencies, domestically and internationally to better understand and assess the changes in our credit markets. In particular, we are monitoring: (1) the size of corporate debt in aggregate and by industry; (2) the location and type of holders, and (3) credit quality. We are also considering the likely actions of market participants if circumstances changes.

In conjunction with our fellow U.S. and international regulators, we are also monitoring issues in other areas such as: (1) central clearing (including issues related to capital, redundancy and resilience); (2) governmental actions (including monetary and trade policy); (3) cybersecurity and data integrity (including identifying and assessing mission-critical systems); and (4) financial stability matters, more generally, understanding that these areas cannot be viewed in isolation. These are just a few of the developments in, and related risks to, the domestic and international financial markets where the SEC has focused its attention.

## **Conclusion**

Thank you for the opportunity to testify today and for the Committee's continued support of the SEC, its mission and, in particular, its people. I look forward to working with this Committee and each of you to advance our mission to the benefit of our capital markets and our Main Street investors.

---

<sup>97</sup> See Board of Governors of the Federal Reserve System, Nonfinancial corporate business debt securities and loans, liability, Level [BCNSDODNS], <https://fred.stlouisfed.org/series/BCNSDODNS>.

<sup>98</sup> See Board of Governors of the Federal Reserve System, Table L.121 of the Federal Reserve Financial Accounts, Money Market Funds, <https://www.federalreserve.gov/apps/fof/DisplayTable.aspx?t=L.121>.

<sup>99</sup> See DERA Economic and Risk Outlook (Nov. 2019), available at [https://www.sec.gov/files/DERA\\_Quarterly%20Economic%20and%20Financial%20Outlook%20Dec2019.pdf](https://www.sec.gov/files/DERA_Quarterly%20Economic%20and%20Financial%20Outlook%20Dec2019.pdf).

## Appendix A

### FY 2019 One-Year Agenda (Published in the Fall of 2018) (Strikeouts Reflect Completion of Indicated Stage of Rulemaking)

<u>Agency</u>	<u>Agenda Stage of Rulemaking</u>	<u>Title</u>	<u>RIN</u>
SEC	Prerule Stage	Harmonization of Exempt Offerings	<del>3235-AM27</del>
SEC	Prerule Stage	Earnings Releases/Quarterly Reports	<del>3235-AM40</del>
SEC	Proposed Rule Stage	Modernization of Investment Company Disclosure	<del>3235-AM28</del>
SEC	Proposed Rule Stage	<del>Amendments to Financial Disclosures About Acquired Businesses</del>	<del>3235-AL77</del>
SEC	Proposed Rule Stage	<del>Business, Financial and Management Disclosure Required By Regulation S-K</del>	<del>3235-AL78</del>
SEC	Proposed Rule Stage	<del>Guide 3 Bank Holding Company Disclosure</del>	<del>3235-AL79</del>
SEC	Proposed Rule Stage	<del>Filing Fee Processing</del>	<del>3235-AL96</del>
SEC	Proposed Rule Stage	<del>Disclosure of Payments by Resource Extraction Issuers</del>	<del>3235-AM06</del>
SEC	Proposed Rule Stage	<del>Extending the Testing the Waters Provision to Non-Emerging Growth Companies</del>	<del>3235-AM23</del>
SEC	Proposed Rule Stage	<del>Accelerated Filer Definition</del>	<del>3235-AM41</del>
SEC	Proposed Rule Stage	<del>Regulation A</del>	<del>3235-AM42</del>
SEC	Proposed Rule Stage	<del>Exchange-Traded Funds</del>	<del>3235-AJ60</del>
SEC	Proposed Rule Stage	<del>Enhanced Disclosure for Separate Accounts Registered as Unit Investment Trusts and Offering Variable Insurance Products</del>	<del>3235-AK60</del>
SEC	Proposed Rule Stage	<del>Use of Derivatives by Registered Investment Companies and Business Development Companies</del>	<del>3235-AL60</del>
SEC	Proposed Rule Stage	<del>Amendments to the Marketing Rules Under the Advisers Act</del>	<del>3235-AM08</del>
SEC	Proposed Rule Stage	<del>Fund of Funds Arrangements</del>	<del>3235-AM29</del>
SEC	Proposed Rule Stage	<del>Offering Reform for Business Development Companies under the Small Business Credit Availability Act and Closed-end Funds under the Economic Growth, Regulatory Relief, and Consumer Protection Act</del>	<del>3235-AM31</del>
SEC	Proposed Rule Stage	Transfer Agents	<del>3235-AL55</del>
SEC	Proposed Rule Stage	Harmonization of Certain Title VII Rules	<del>3235-AM13</del>

<u>Agency</u>	<u>Agenda Stage of Rulemaking</u>	<u>Title</u>	<u>RIN</u>
SEC	Proposed Rule Stage	Voleker Rule Community Bank Relief and Removing Naming Restrictions	<del>3235-AM43</del>
SEC	Proposed Rule Stage	Amendment to Rule for Nationally Recognized Statistical Rating Organizations	<del>3235-AM05</del>
SEC	Final Rule Stage	Disclosure of Hedging by Employees, Officers and Directors	<del>3235-AL49</del>
SEC	Final Rule Stage	Modernization of Property Disclosures for Mining Registrants	<del>3235-AL81</del>
SEC	Final Rule Stage	Disclosure Update and Simplification	<del>3235-AL82</del>
SEC	Final Rule Stage	Amendments to Implement FAST Act Report	<del>3235-AM00</del>
SEC	Final Rule Stage	Form CRS Relationship Summary; Amendments to Form ADV; Required Disclosures to Retail Communications and Restrictions on the use of Certain Names or Titles	<del>3235-AL27</del>
SEC	Final Rule Stage	Amendments to Securities Act Rules Under the Fair Access to Investment Research Act of 2017	<del>3235-AM24</del>
SEC	Final Rule Stage	Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation	<del>3235-AM36</del>
SEC	Final Rule Stage	Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Capital Requirements for Broker-Dealers	<del>3235-AL12</del>
SEC	Final Rule Stage	Reporting and Recordkeeping Requirements for Security Based Swap Dealers and Major Security Based Swap Participants	<del>3235-AL45</del>
SEC	Final Rule Stage	Definition of “Covered Clearing Agency”	<del>3235-AL48</del>
SEC	Final Rule Stage	Disclosure of Order Handling Information	<del>3235-AL67</del>
SEC	Final Rule Stage	Applications by Security-Based Swap Dealers or Major Security Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security Based Swaps	<del>3235-AL76</del>
SEC	Final Rule Stage	Transaction Fee Pilot	<del>3235-AM04</del>
SEC	Final Rule Stage	Prohibitions and Restrictions on Proprietary Trading and Certain Relationships With Hedge Funds and Private Equity Funds <sup>100</sup>	<del>3235-AM10</del>
SEC	Final Rule Stage	Regulation Best Interest	<del>3235-AM35</del>
SEC	Final Rule Stage	Amendments to Municipal Securities Disclosure	<del>3235-AL97</del>
SEC	Final Rule Stage	Auditor Independence With Respect to Loans or Debtor-Creditor Relationships	<del>3235-AM01</del>

<sup>100</sup> The agencies intend to issue a separate proposed rulemaking addressing and requesting comment on additional covered funds provisions and other fund-related issues.

<u>Agency</u>	<u>Agenda Stage of Rulemaking</u>	<u>Title</u>	<u>RIN</u>
SEC	Final Rule Stage	Amendments to the Commission's Whistleblower Program Rules	<a href="#">3235-AM11</a>