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Alan B. Levenson Keynote Address

The Honorable Mary Jo White

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**“The SEC in 2017 and the Path Ahead”
The Honorable Mary Jo White**

**44th Annual Securities Regulation Institute
Coronado, California
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Good morning. Thank you, Steve [Bochner], for that warm introduction.

It is an honor to speak with you again in honor of Alan B. Levenson, not only a legendary Director of the SEC’s Division of Corporation Finance and distinguished private practitioner, but also a founder of both this Institute and the annual “SEC Speaks” conference. It is a special honor today that Alan’s daughter Julie Levenson is with us to share her wonderful memories of her father. In these days of politics and partisanship, Alan Levenson stands out as the model public servant, reminding us all of what government service is about. Each day I was at the Commission, I witnessed the dedication and sacrifice that true commitment to public service requires. I am pleased to report that the SEC today remains a strong, independent agency doing a critical job in the finest tradition of Alan Levenson.

When I was asked in July to give today’s keynote address, I was certain that I would no longer be Chair of the SEC on January 23, 2017. I expected to follow, as I now have, the path of SEC Chairs before me and step down when the next President was inaugurated, whoever that would be. So, I suggested to Steve Bochner that I perhaps should not make a return appearance this year. But he insisted that I – in his words – “take a victory lap.”

Now, as anyone who has served at the Commission knows well, there is no such thing as a victory lap – it seems like half the people disapprove and criticize each measure the agency takes, while the other half praises the agency for the very same measure – and it is a different half of the people each time. In fact, if asked about my top accomplishment, I may well say it is standing here, intact, on my first full working day as a private citizen. So, my appearance today, here in Coronado with all of you, is a very welcome homecoming to private life. Thank you for having me.

While I will not call it a victory lap, my remarks today will reflect the deep pride I take in the agency’s impressive accomplishments in the almost four years that I served as Chair. I set lofty goals, and I do take tremendous satisfaction that we met or surpassed so many of them. Most importantly, I am leaving the SEC with the confidence of knowing that the agency is stronger than ever and poised going forward to address the challenges facing investors and our dynamic markets. Today, per Steve’s invitation, I will briefly review a few of our accomplishments from the past four years, and then offer my thoughts and some predictions on what you can expect to see from the Commission in the coming months.

A Brief Look Back

For the last four years, the Commission has been working flat out to deliver on all aspects of its mission – protecting investors, maintaining fair, orderly, and efficient markets, and facilitating capital formation.¹ I was often asked what specifically was my main priority as Chair – what was on my “front burner?” As Chair of the SEC, you cannot have a single priority – you cannot be the “Enforcement Chair” or the “Corp Fin Chair” or the “Market Structure Chair” – you need to engage on all fronts. The full mission has to be your priority and the Chair of the SEC has to operate a really big stove, with a lot of front burners.

I had the privilege of speaking with you twice during my time as Chair,² and I thought I would return to those remarks to provide perspective on the agency’s accomplishments during my tenure. One always looks back with some trepidation at what you said you would get done and compares it to what you did get done. But, with a couple exceptions that I will talk about, I am very pleased to see that the agency largely delivered on my promises and met my aspirations.

My first appearance as Chair at the Institute was in January 2014 – I had been at the SEC for less than a year. At that early point in my tenure, the Commission had already adopted several major rules, many to address mandates from Congress under the Dodd-Frank Act and JOBS Act. The Volcker Rule had just been finalized.³ The ban on general solicitation had been lifted,⁴ and the Commission had adopted a very important investor protection measure to get bad actors out of private offerings.⁵ A comprehensive framework for the registration and regulation of financial advisors to municipalities had been finalized.⁶ And the financial responsibility rules and audit requirements for broker-dealers had been extensively updated and enhanced.⁷ The Commission had also advanced a fresh suite of very important proposals, ranging from money market fund reform to Regulation A+, and a brand new regime to facilitate crowdfunding.⁸

¹ See *SEC Accomplishments: Protecting Investors and Our Markets through Rigorous Oversight, Vigorous Enforcement, and Transformative Rulemaking* (Nov. 21, 2016), available at <http://www.sec.gov/about/sec-accomplishments.htm>.

² See Mary Jo White, Chair, U.S. Securities and Exchange Commission, *The SEC in 2014* (Jan. 27, 2014), 41st Annual Securities Regulation Institute available at <http://www.sec.gov/News/Speech/Detail/Speech/1370540677500>; and Mary Jo White, Chair, U.S. Securities and Exchange Commission, *A Conversation with Mary Jo White* (Jan. 26, 2016), 43rd Annual Securities Regulation Institute, available at <https://www.sec.gov/news/speech/securities-regulation-institute-keynote-white.html>.

³ See Bank Holding Company Act Release No. BHCA-1, *Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, and Relationships With, Hedge Funds and Private Equity Funds* (Dec. 10, 2013), available at <http://www.sec.gov/rules/final/2013/bhca-1.pdf>.

⁴ See Release No. 33-9415, *Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings* (Jul. 10, 2013), available at <http://www.sec.gov/rules/final/2013/33-9415.pdf>.

⁵ See Release No. 33-9414, *Disqualification of Felons and Other “Bad Actors” from Rule 506 Offerings* (Jul. 10, 2013), available at <http://www.sec.gov/rules/final/2013/33-9414.pdf>.

⁶ See Release No. 34-70462, *Registration of Municipal Advisors* (Sep. 18, 2013), available at <http://www.sec.gov/rules/final/2013/34-70462.pdf>.

⁷ See Release No. 34-70073, *Broker-Dealer Reports* (Jul. 30, 2013), available at <http://www.sec.gov/rules/final/2013/34-70073.pdf>; and Release No. 34-70072, *Financial Responsibility Rules for Broker-Dealers* (Jul. 30, 2013), available at <https://www.sec.gov/rules/final/2013/34-70072.pdf>.

⁸ See e.g., Release No. 33-9616, *Money Market Fund Reform; Amendments to Form PF* (Jul. 23, 2014), available at <http://www.sec.gov/rules/final/2014/33-9616.pdf>; Release Nos. 33-9497; 34-71120; 39-2493, *Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act* (Dec. 18, 2013),

Looking back on that 2014 speech, it is telling how many of the themes and pressing issues I outlined then carried all the way through to our work just last week. And I suspect that they will continue to play an important role in the Commission's agenda going forward.

Evolving with Market Technology

The strength and fairness of equity market structure topped the list in 2014, as it does today. Back then, I outlined the immediate priority to evolve with market technology with two major efforts: first, to expand and enhance the Commission's ability to keep on top of our complex, lightning-fast modern markets; and second, to ensure that the technology used by the exchanges and other market participants is resilient and designed and used responsibly. On both counts, the Commission delivered.

The Commission has developed a number of new tools that assist in the integration and analysis of huge volumes of financial market data, and those capabilities continue to develop.⁹ Most prominently, the Commission in November approved a final plan for a consolidated audit trail, which will provide a comprehensive, centralized database of timely and accurate information about all orders entered and trades executed across the U.S. securities markets, for both equities and options.¹⁰ This step marked the culmination of years of effort on the part of the Commission and the self-regulatory organizations, and the final system will be a game-changer for market oversight. The processor to implement the plan was selected last week.

The Commission also took significant action to enhance the operational integrity of the market systems on which investors depend every day. It adopted Regulation Systems Compliance and Integrity, or SCI, which requires key market participants – including the exchanges, high-volume alternative trading systems, and clearing agencies – to have comprehensive policies and procedures in place to ensure the capacity, integrity, resiliency, availability, and security of key automated systems.¹¹ It also requires corrective action and reporting to both market participants and the SEC when systems problems do occur. That rule is now fully operational, and the SEC's examiners have been engaged in intensive compliance reviews.

Regulation SCI was the most prominent of an array of initiatives to enhance critical market infrastructure and to update the volatility moderators put in place after the 2010 "Flash Crash." The exchanges and FINRA, working closely with the SEC staff, have made significant

available at <http://www.sec.gov/rules/proposed/2013/33-9497.pdf>; and Release Nos. 33-9470; 34-70741, *Crowdfunding* (Oct. 23, 2013) available at <http://www.sec.gov/rules/proposed/2013/33-9470.pdf>. Final rules for these proposals and virtually all of the other proposals issued by the Commission in 2013 were finalized during my tenure, as noted below.

⁹ One significant example is the Market Information Data Analytics System (MIDAS), which is described in detail at <https://www.sec.gov/marketstructure/midas.html>.

¹⁰ See Release No. 34-79318, *Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail* (Nov. 15, 2016), available at <http://www.sec.gov/rules/sro/nms/2016/34-79318.pdf>.

¹¹ See Release No. 73639, *Regulation Systems Compliance and Integrity* (Dec. 5, 2014), available at <http://www.sec.gov/rules/final/2014/34-73639.pdf>.

progress in addressing the range of disruptive issues highlighted by events like the Nasdaq SIP outage in 2013 and NYSE's trading outage in 2015.¹²

Evolving with New Financial Products

Another critical focus identified in 2014 was addressing the evolution in financial products over the past several decades, including over-the-counter derivatives, money market funds, and asset-backed securities. During my tenure, the Commission adopted a number of major reforms in each of these areas and related ones.

Title VII of the Dodd-Frank Act charged the Commission with establishing a brand new regulatory framework for security-based swaps, designed to be coordinated with the CFTC's work in the much larger market for swaps untied directly to securities. The Commission completed work on transparency rules for security-based swaps, ensuring that investors and regulators alike will have the information they need about a previously opaque marketplace.¹³ It also adopted nearly all of the rules required to register and regulate security-based swap intermediaries, including dealers and major participants, whether active in the United States or abroad.¹⁴

¹² For a summary of these efforts and other measures regarding operational integrity in the markets, see Mary Jo White, Chair, U.S. Securities and Exchange Commission, *Equity Market Structure in 2016 and for the Future* (Sep. 14, 2016), 83rd Annual Market Structure Conference at the Security Traders Association, available at <http://www.sec.gov/news/speech/white-equity-market-structure-2016-09-14.html> ("2016 Market Structure Speech").

¹³ See Release No. 34-74246, *Security-Based Swap Data Repository Registration, Duties, and Core Principles* (Feb. 11, 2015), available at <https://www.sec.gov/rules/final/2015/34-74244.pdf>; Release No. 34-74244, *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information* (Feb. 11, 2015), available at <https://www.sec.gov/rules/final/2015/34-74244.pdf>; Release No. 34-78321, *Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information* (Jul. 14, 2016), available at <https://www.sec.gov/rules/final/2016/34-78321.pdf>; and Release No. 34-78716, *Access to Data Obtained by Security-Based Swap Data Repositories* (Aug. 29, 2016), available at <https://www.sec.gov/rules/final/2016/34-78321.pdf>. While not required for transaction reporting to commence, the Commission has also proposed a form that would govern how security-based swap data repositories should make their data available to the Commission. See Release No. 34-76624, *Establishing the Form and Manner with which Security-Based Swap Data Repositories Must Make Security-Based Swap Data Available to the Commission* (Dec. 11, 2015), available at <https://www.sec.gov/rules/proposed/2015/34-76624.pdf>.

¹⁴ See Release No. 34-75611, *Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants* (Aug. 5, 2015), available at <https://www.sec.gov/rules/final/2015/34-75611.pdf>; Release No. 34-77104, *Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed By Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer De Minimis Exception* (Feb. 10, 2016), available at <https://www.sec.gov/rules/final/2016/34-77104.pdf>; Release No. 34-72472, *Application of "Security-Based Swap Dealer" and "Major Security-Based Swap Participant" Definitions to Cross-Border Security-Based Swap Activities* (Jun. 25, 2014), available at <https://www.sec.gov/rules/final/2014/34-72472.pdf>; Release No. 34-77617, *Business Conduct Standards for Security-Based Swap Dealers and Major Security Based Swap Participants* (Apr. 14, 2016), available at <https://www.sec.gov/rules/final/2016/34-77617.pdf>; and Release No. 34-78011, *Trade Acknowledgment and Verification of Security-Based Swap Transactions* (Jun. 8, 2016), available at <https://www.sec.gov/rules/final/2016/34-78011.pdf>. The Commission has also proposed a process for dealing with bad actors in the security-based swap market. See Release No. 34-75612, *Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons to Effect or Be Involved in Effecting Security-Based Swaps* (Aug. 5, 2015), available at <https://www.sec.gov/rules/proposed/2015/34-75612.pdf>.

The Commission was poised in December to finalize the few remaining rules required to operationalize the regime for security-based swap intermediaries.¹⁵ Despite unanimity among the Commissioners about the high priority of these rules, the lack of an available quorum on our three-person Commission unfortunately prevented adoption. The SEC's quorum rules require that all Commissioners participate in the consideration of a rule when there are only three members.¹⁶ The new Commission will hopefully finalize these important Title VII rules in the coming months.

Money market fund reform was adopted in 2014, and the rules became fully effective last October.¹⁷ These rules fundamentally changed the way money market funds work, in particular by addressing concerns with the type of fund that experienced problems during the financial crisis. The transition to the new rules has been orderly and as expected.

Since I spoke with you in 2014, the Commission's work in asset management expanded considerably beyond money market funds. The Commission adopted major rules to improve and expand the information reported to the Commission and investors by all registered funds and their advisers,¹⁸ as well as to impose new controls on how those funds manage their liquidity and to permit the use of swing pricing.¹⁹ It also proposed significant enhancements to the regulation of funds' use of derivatives, and new rules for transition and business continuity planning by advisers.²⁰

In addition to its extensive work on asset management, the Commission was active and productive on the securitization front. "Regulation AB2" has been finalized, bringing loan-level disclosure to major segments of a market with \$4.8 trillion in issuances over the past decade, and which stood at the epicenter of the financial crisis.²¹ The Commission, acting jointly with five

¹⁵ See Release No. 34-68071, *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers* (Oct. 18, 2012), available at <https://www.sec.gov/rules/proposed/2012/34-68071.pdf>; and Release No. 34-71958, *Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers* (Apr. 17, 2014), available at <https://www.sec.gov/rules/proposed/2014/34-71958.pdf>.

¹⁶ 17 CFR 200.41

¹⁷ See Release No. IC-31166, *Money Market Fund Reform; Amendments to Form PF* (Jul. 23, 2014), available at <http://www.sec.gov/rules/final/2014/33-9616.pdf>.

¹⁸ See Release Nos. 33-9776; 34-75002; IC-31610, *Investment Company Reporting Modernization* (May 20, 2015), available at <http://www.sec.gov/rules/proposed/2015/33-9776.pdf>; and Release No. IA-4509, *Amendments to Form ADV and Investment Advisers Act Rules* (Aug. 25, 2016), available at <http://www.sec.gov/rules/final/2016/ia-4509.pdf>.

¹⁹ See Release Nos. 33-10233; IC-32315, *Investment Company Liquidity Risk Management Programs* (Oct. 13, 2016), available at <http://www.sec.gov/rules/final/2016/33-10233.pdf>; and Release Nos. 33-10233; IC-32315, *Investment Company Liquidity Risk Management Programs* (Oct. 13, 2016), available at <http://www.sec.gov/rules/final/2016/33-10233.pdf>.

²⁰ See Release No. IC-31933, *Use of Derivatives by Registered Investment Companies and Business Development Companies* (Dec. 11, 2015), available at <http://www.sec.gov/rules/proposed/2015/ic-31933.pdf>; and Release No. IA-4439, *Adviser Business Continuity and Transition Plans* (Jun. 28, 2016), available at <http://www.sec.gov/rules/proposed/2016/ia-4439.pdf>.

²¹ See Release No. 33-9638, *Asset-Backed Securities Disclosure and Registration* (Sep. 4, 2014), available at <http://www.sec.gov/rules/final/2014/33-9638.pdf>.

other federal agencies, also adopted credit risk retention rules, which require securitizers of asset-backed securities to keep “skin in the game” for the securities they package and sell.²² This important measure added much needed protections to ensure that participants in this market were properly considering the risks embedded in the securities being offered to investors.

Evolving with New Paths to Capital Formation

Finally, my remarks in 2014 also reviewed the significant progress we made on capital formation initiatives, including implementing the mandates from the JOBS Act. The Commission has now completed all of its work on those mandates, including final rules permitting crowdfunding and revitalizing Regulation A.²³ While it is still too early to judge their impact, it has been encouraging to see these new paths to capital formation already getting traction.

The Commission also sought to facilitate the development of private markets for capital formation by modernizing the rules related to intrastate offerings, including state-based crowdfunding offerings, through an update of Rule 147.²⁴ The Commission also revised Rule 504 to permit offerings up to \$5 million in a twelve-month period and made it consistent with other provisions of Regulation D by including a bad actor disqualification provision.

Another major priority I discussed with you in 2014 and again last year is our comprehensive disclosure effectiveness review. The Commission made important progress in this review, beginning with a formal request for comment for certain financial reporting and disclosure requirements in Regulation S-X.²⁵ The Commission then issued a major concept release that seeks input on modernizing certain business and financial disclosure requirements in Regulation S-K for the benefit of investors and companies,²⁶ as well as a separate request for comment on disclosure requirements in Regulation S-K relating to management, certain security holders, and corporate governance matters.²⁷

²² See Release No. 34-73407, *Credit Risk Retention* (Oct. 24, 2014), available at <http://www.sec.gov/rules/final/2014/34-73407.pdf>.

²³ See Release Nos. 33-9974; 34-76324, *Crowdfunding* (Oct. 30, 2015), available at <http://www.sec.gov/rules/final/2015/33-9974.pdf>; and Release Nos. 33-9741; 34-74578; 39-2501, *Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A)*, (Mar. 25, 2015), available at <http://www.sec.gov/rules/final/2015/33-9741.pdf>.

²⁴ See Release No. 33-9973, *Exemptions to Facilitate Intrastate and Regional Securities Offerings* (Oct. 30, 2015), available at <http://www.sec.gov/rules/proposed/2015/33-9973.pdf>.

²⁵ See Release No. 33-9929, *Request for Comment on the Effectiveness of Financial Disclosures about Entities other than the Registrant* (Sep. 25, 2015), available at <http://www.sec.gov/rules/other/2015/33-9929.pdf>.

²⁶ See Release No. 33-10064, *Business and Financial Disclosure Required by Regulation S-K* (Apr. 13, 2016), available at <http://www.sec.gov/rules/concept/2016/33-10064.pdf>. In July 2015, the Commission also issued a concept release about possible revisions to audit committee disclosures. See Release No. 33-9862, *Possible Revisions to Audit Committee Disclosures* (Jul. 1, 2015), available at <http://www.sec.gov/rules/concept/2015/33-9862.pdf>.

²⁷ See Release No. 33-10198, *Request for Comment on Subpart 400 of Regulation S-K Disclosure Requirements Relating to Management, Certain Security Holders and Corporate Governance Matters* (Aug. 25, 2016), available at <http://www.sec.gov/rules/other/2016/33-10198.pdf>.

The Commission also sought to identify and address discrete areas where updates to our disclosure requirements are now needed.²⁸ And it proposed amendments to eliminate redundant, overlapping, outdated, or superseded disclosure provisions, in light of subsequent changes to Commission disclosure rules, accounting principles, and technology.²⁹ The disclosure effectiveness review is critically important for meeting the changing needs of investors and issuers – both in type of information disclosed and how it is delivered. I would expect disclosure effectiveness to remain a high priority with the new Commission.

Pursuing Strong Enforcement and Examinations

I would be remiss if I did not touch on the work of the Enforcement Division and the Office of Compliance Exams and Inspections, as I did in 2014. I spoke extensively last November on the Enforcement Division’s accomplishments over the last three years, so I will just briefly mention them today.³⁰ The Commission brought record numbers of enforcement actions, obtained unprecedented monetary remedies, and returned hundreds of millions of dollars to harmed investors, while at the same time bringing many innovative and first-of-their-kind cases across the spectrum of securities laws and market participants. Beyond the impressive numbers, dollars and cases, the Commission reshaped how the Enforcement Division operates – the way it investigate cases, the types of cases it brings, the renewed focus on individuals, preparedness for trial, and the approach to settlement, adding required admissions of wrongdoing in certain cases. I promised at my confirmation hearing that the enforcement program would be “bold and unrelenting,”³¹ and I think the agency has more than lived up to that goal.

OCIE’s National Exam Program impressively enhanced its performance throughout my tenure and had a record year in 2016 – conducting the highest number of exams in seven years. OCIE also restructured to devote more resources to investment adviser examinations, where our funding is wholly insufficient to meet this critical responsibility. The Commission’s examiners serve as investors’ “boots on the ground” – engaging directly with registered entities to ensure compliance with essential investor safeguards, including asset custody rules, accurate fee disclosures, and rules that protect market integrity. OCIE just published its priorities for 2017, which includes a range of critical areas, from cybersecurity to FINRA exams and private fund advisers, to retail investment products, like robo-advisors and programs targeting seniors, to compliance with the new money market fund rules.³² OCIE will no doubt continue to build on its risk-based and data-driven approach, effectively allocating scarce resources to have the greatest impact.

²⁸ See, e.g., Release No. 33-10098, *Modernization of Property Disclosures for Mining Registrants* (Jun. 16, 2016), available at <https://www.sec.gov/rules/proposed/2016/33-10098.pdf>.

²⁹ See Release No. 33-10110, *Disclosure Update and Simplification* (Jul. 13, 2016), available at <https://www.sec.gov/rules/proposed/2016/33-10110.pdf>.

³⁰ See Mary Jo White, Chair, U.S. Securities and Exchange Commission, *A New Model for SEC Enforcement: Producing Bold and Unrelenting Results* (Nov. 18, 2016), New York University School of Law available at <http://www.sec.gov/news/speech/chair-white-speech-new-york-university-111816.html>.

³¹ *Nominations Hearing Before the S. Comm. on Banking, Housing, and Urban Affairs* (Mar. 12, 2013) (statement of Mary Jo White, Chair, U.S. Securities and Exchange Commission), available at <http://www.banking.senate.gov/public/cache/files/619e5603-c2c8-4085-98c6-0014ce29bde7/33A699FF535D59925B69836A6E068FD0.whitetestimony31213.pdf>.

³² See 2017 Examination Priorities (Jan. 12, 2017), available at <http://www.sec.gov/news/pressrelease/2017-7.html>.

The SEC Going Forward

All of the areas I have just reviewed have a certain persistence and continuity about them, an unrelenting need for attention that does not pause or disappear with a change in the composition of the Commission. It will always be the responsibility of the Commission to boldly enforce the securities laws, to improve the fairness and resiliency of our markets, to rise to the challenge of new technology and products, and to create an environment for robust capital formation that is built on a foundation of strong investor protections. This work rightly consumed my time as Chair and the many Chairs who preceded me, and it will no doubt occupy those that follow.

It will, of course, be up to the next Chair to determine precisely what the SEC's agenda will be in 2017 and beyond, and Congress may have a say in that as well. But, even with these uncertainties, there are several items that I believe will likely be on the front burner for the next Chair. I thought I would try to give you a sense of what those are likely to be, both near-term and longer term. Several were ripe for final Commission action last year, but were stalled by the post-election absence of a quorum to act.³³ Please keep in mind that you should receive my thoughts on what may come at the Commission only as my predictions, with all the caveats reserved for the musings of a private citizen.

Some things though are certain. The SEC's critical day-to-day responsibilities will be carried out without interruption. The Divisions of Corporation Finance and Investment Management will thus continue to review disclosures from thousands of operating and investment companies, on which investors depend each day for their decisions. The Division of Trading and Markets and the Office of Municipal Securities will continue to review thousands of filings from exchanges and other SROs to preserve a fair and orderly marketplace for all investors.³⁴ Staff from across the agency will continue to respond to inquiries from registrants and investors, both big and small.³⁵ Strong enforcement and comprehensive exam programs will remain a fact of life. In other words, the SEC's essential beat will certainly go on.

Other things are somewhat less certain, but are, in my view, highly likely to be subjects of the Commission's focus in the next several months. One is a request for comment on statistical and other disclosures by bank holding companies and other financial institutions. The staff has completed its reexamination of the principal Commission disclosure guidance in this area, Industry Guide 3, which was issued in 1976.³⁶ Gathering public feedback on these disclosures would be an important addition to the work on disclosure effectiveness undertaken in the last four years. The staff's recommendation to issue this request for comment was ready for

³³ Letter from Mary Jo White, Chair, U.S. Securities and Exchange Commission, to The Honorable Richard Shelby, Chairman, Committee on Banking, Housing, and Urban Affairs and The Honorable Mike Crapo, Chairman, Subcommittee on Securities, Insurance, and Investment (Dec. 12, 2016), *available at* <https://www.sec.gov/foia/docs/white-letter-to-shelby-and-crapo-121216.pdf> ("December Letter").

³⁴ The scope of this responsibility is vast, and a sense of its extent is reflected on the Commission's web page for SRO rulemaking, located at <http://www.sec.gov/rules/sro.shtml>.

³⁵ See e.g., all of the work summarized at <http://www.investor.gov>.

³⁶ See Industry Guide 3, *Statistical Disclosure by Bank Holding Companies*, *available at* <https://www.sec.gov/about/forms/industryguides.pdf>.

Commission consideration in December, so it could be a near-term action item for either the now two-member Commission or a full Commission.³⁷

Another item ready for Commission consideration is a staff recommendation for a rule proposal to require the use of inline XBRL format in the submission of certain Commission filings to facilitate easier access to, and analysis of, that information.³⁸ Last June, the Commission permitted filers to voluntarily make such filings,³⁹ and there has been broad support among the Commissioners for moving forward with a requirement.⁴⁰

Less clear is at least the timing of the next stages of the work on security-based swaps under Title VII of the Dodd-Frank Act. The CFTC has largely completed its work on over-the-counter derivatives, and there should be continued interest in ensuring that market participants can plan for the remaining Commission rules. The predictability and harmonization of these rules has attracted considerable attention since 2010, and recent legislative efforts to date appear to be focused on that goal, rather than significantly altering the new regime for derivatives.⁴¹

The most significant of the Commission rules in this area left to adopt is the proposal to establish the capital, margin, and asset segregation requirements for dealers and market participants. The adoption of final rules in this area, as well as related recordkeeping and reporting requirements, were ready for Commission action before my departure,⁴² and should be, given the wide consensus on the Commission for completing these rules and this regime, a focus in the coming months. But the uncertainty around the future of the Dodd-Frank Act, or some parts of it, will likely slow the agency's progress until there is some greater clarity and perhaps a full Commission.⁴³ I do, however, expect them to be ultimately adopted, as there is widespread

³⁷ December Letter.

³⁸ December Letter.

³⁹ See Release No. 34-78041, *Order Granting Limited and Conditional Exemption Under Section 36(a) of the Securities Exchange Act of 1934 from Compliance with Interactive Data File Exhibit Requirement in Forms 6-K, 8-K, 10-Q, 10-K, 20-F and 40-F to Facilitate Inline Filing of Tagged Financial Data* (Jun. 13, 2016), available at <http://www.sec.gov/rules/exorders/2016/34-78041.pdf>.

⁴⁰ See, e.g., Kara M. Stein, Commissioner, U.S. Securities and Exchange Commission, *Accountants and Capital Markets in an Era of Digital Disruption* (Sep. 9, 2015), Institute of Chartered Accountants in England and Wales and British American Business, available at <http://www.sec.gov/news/speech/remarks-inst-chartered-acctnts.html>; and Michael S. Piwowar, Commissioner, U.S. Securities and Exchange Commission, *Remarks at the 34th Annual Current Financial Reporting Issues Conference* (Nov. 16, 2015), available at <http://www.sec.gov/news/speech/piwowar-current-financial-reporting-issues-conference.html>.

⁴¹ The CHOICE Act introduced in the last session of Congress, for example, focuses on certain action with respect to harmonization between the SEC and CFTC, and with non-U.S. regulatory efforts, and does not seek a repeal of Title VII. See Financial CHOICE Act of 2016, H.R. 5983, available at <http://www.congress.gov/114/bills/hr5983/BILLS-114hr5983rh.pdf>.

⁴² December Letter.

⁴³ Last year, the final rules to facilitate certain communications in connection with security-based swap transactions were also ready for Commission consideration. See Release No. 33-9643, *Treatment of Certain Communications Involving Security-Based Swaps That May Be Purchased Only By Eligible Contract Participants* (Sep. 8, 2014), available at <http://www.sec.gov/rules/proposed/2014/33-9643.pdf>. These rules are related to a set of exemptions regarding the implementation of the security-based swap regime, which the Commission extended earlier this month, and I would expect the Commission to take them up in the near term. See December Letter; Release No. 34-79833, *Order Extending Certain Temporary Exemptions under the Securities Exchange Act of 1934 in Connection*

agreement about the need for enhanced transparency and regulation of the over-the-counter derivatives markets that played such a prominent role in the financial crisis.⁴⁴ The more controversial Title VII rules governing trading requirements and registration of security-based swap execution facilities could be more significantly delayed and perhaps changed by legislation.

One very important matter that was poised for Commission consideration last year was the adoption of rules to regulate mutual funds' use of derivatives and require the institution of enhanced risk management measures.⁴⁵ Another was the adoption of rules required by statute regarding the orderly liquidation of certain broker dealers, which is a joint rulemaking with the FDIC as part of their authority embodied in Title II of the Dodd-Frank Act.⁴⁶ Also caught post-election in the challenges of Commission quorum requirements was the adoption of Rule 30e-3, which would provide an optional method for funds to transmit shareholder reports by web posting.⁴⁷ It remains to be seen what the new Commission may do with these initiatives, and when.

What about other pending proposals advanced under my tenure? As I said, I expect equity market structure and the related issues to continue to be of great interest to the Commission and will likely continue to afford opportunities for consensus. There are pending proposals to enhance the transparency of significant alternative trading venues for equities and provide investors more information about where and how their orders are handled.⁴⁸ Both received broad support at the time they were proposed, as well as in the comment file, and will

with the Revision of the Definition of "Security" to Encompass Security-Based Swaps and Request for Comment (Jan. 18, 2017), available at <http://www.sec.gov/rules/exorders/2017/34-79833.pdf>.

⁴⁴ Completing our statutory mandates with respect to security-based swaps was a particularly high priority of all of the Commissioners who served during my tenure. *See, e.g.* Michael S. Piwowar, Commissioner, U.S. Securities and Exchange Commission, *Statement at Open Meeting Regarding Amendments to Regulation SBSR* (Jul. 13, 2016), available at <http://www.sec.gov/news/statement/piwowar-statement-open-meeting-071316-regulation-sbsr.html>; Kara M. Stein, Commissioner, U.S. Securities and Exchange Commission, *Statement at Open Meeting on Final Rules Regarding Application of Title VII Dealer De Minimis Requirements to Security-Based Swap Dealing Activity in the United States* (Feb. 10, 2016), available at <http://www.sec.gov/news/statement/stein-statement-021016.html>; Daniel M. Gallagher and Michael S. Piwowar, Commissioners, U.S. Securities and Exchange Commission, *Statement Regarding Security-Based Swap Rules* (Sep. 25, 2015), available at <http://www.sec.gov/news/statement/gallagher-piwowar-security-based-swaps.html>; Luis A. Aguilar, Commissioner, U.S. Securities and Exchange Commission, *Finishing the Work of Regulating Security-Based Derivatives* (Sep. 16, 2015), available at <https://www.sec.gov/news/statement/finishing-the-work-of-regulating-security-based-derivatives.html>.

⁴⁵ December Letter.

⁴⁶ *Id.* See Release No. 34-77157, *Covered Broker-Dealer Provisions under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act* (Feb. 17, 2016), available at <http://www.sec.gov/rules/proposed/2016/34-77157.pdf>.

⁴⁷ *Id.* This proposal was part of the larger effort to modernize the reporting requirements for investment companies and advisers, but did not affect the substantive elements of that initiative. *See* Mary Jo White, Chair, U.S. Securities and Exchange Commission, *Statement at Open Meeting: Modernizing and Enhancing Investment Company and Investment Adviser Reporting* (Oct. 13, 2016), available at <http://www.sec.gov/news/statement/white-statement-open-meeting-101316.html>.

⁴⁸ *See* Release No. 34-76474, *Regulation of NMS Stock Alternative Trading Systems* (Nov. 18, 2015), available at <http://www.sec.gov/rules/proposed/2015/34-76474.pdf>; and Release No. 34-78309, *Disclosure of Order Handling Information* (Jul. 13, 2016), available at <http://www.sec.gov/rules/proposed/2016/34-78309.pdf>.

likely carry forward. I also believe that the Commission will shortly take up in some form a pilot program to assess the impact of potential conflicts of interest in how exchanges and broker-dealers are compensated for order flow and execution.⁴⁹

The agency will likely also, in some manner, address the activities of certain unregistered proprietary trading firms, whether through enforcement, regulation, or otherwise. The staff has developed detailed analyses demonstrating how certain trading strategies can be destabilizing in vulnerable market conditions, and these analyses should be promptly published.⁵⁰ And there remains an important need to clarify the dealer registration requirements for at least some high frequency trading firms.⁵¹

As I indicated earlier, disclosure effectiveness should also continue to be a major focus. The concept release and requests for comment issued during my tenure resulted in considerable feedback and input from investors and companies. The report issued last year on the modernization of Regulation S-K mandated by the FAST Act will certainly generate more feedback, and the agency is required to consider converting some of the recommendations in that report into tangible proposals.⁵² Other steps in the disclosure effectiveness effort could include finalizing the outstanding proposals on updating and simplifying disclosure, as well as modernizing Industry Guide 7 on mining company property disclosure requirements to align them with current industry and global regulatory practices and standards.

There will also no doubt be new proposals once the Commission is again fully constituted and can begin to digest the work that Corporation Finance has done in this area. Virtually every Chair of the agency has taken up disclosure as a hallmark issue, and it is hard to see a break in that trend given all of the interest from both investors and companies, and the enormous amount of work that the staff has already put into this effort over the last three years.

The rest of the docket in Corporation Finance is less clear. During my time as Chair, the Commission made profound changes to the way private offerings are conducted in the United States. When I was sworn in as Chair in April 2013, general solicitation and advertising was not part of the private offering dynamic, crowdfunding was only being used to raise money for charities and to support community-based projects, and Regulation A was collecting dust from years of non-use. We are seeing positive signs from the new pathways for capital formation that the Commission facilitated over the past four years, but understanding the true impact, and whether additional reforms are necessary, will only come with time. It will be important for the next Commission to maintain the cross-agency working groups that were created to monitor these new private markets – to understand how the new reforms are working, whether new

⁴⁹ The Commission's Equity Market Structure Advisory Committee made a detailed recommendation for a potential pilot program, which is available at <http://www.sec.gov/spotlight/emsac/recommendation-access-fee-pilot.pdf>.

⁵⁰ 2016 Market Structure Speech.

⁵¹ See Mary Jo White, Chair, U.S. Securities and Exchange Commission, *The SEC after the Financial Crisis: Protecting Investors, Preserving Markets* (Jan. 17, 2017), The Economic Club of New York, available at <http://www.sec.gov/news/speech/the-sec-after-the-financial-crisis.html>.

⁵² See *Report on Modernization and Simplification of Regulation S-K as Required by Section 72003 of the Fixing America's Surface Transportation Act* (Nov. 23, 2016), available at <http://www.sec.gov/reportspubs/sec-fast-act-report-2016.pdf>.

capital is being raised effectively, and, most importantly, how investors are being treated – so that the Commission can respond nimbly with necessary changes and enhancements.⁵³

The changes implemented by the SEC for private offerings and the earlier JOBS Act amendments targeting emerging growth companies have significantly altered both the private and IPO markets, but there is still more to do to facilitate capital formation and the growth of smaller companies in the United States. IPO activity was down again in 2016 to levels we have not seen in seven years.⁵⁴ It is far too early for this fact to be a report card on the reforms we have advanced over the last four years, but the next Commission does need to continue the work that we started in addressing all stages of the capital formation process, and not just focus on the “on-ramp” to becoming a public company. I would expect the next Commission to do so, looking for ways to provide flexibility where appropriate to facilitate the ability for private markets to provide liquidity for small companies to grow and to adjust the incentives for companies to go public and remain public under our rules and those of the exchanges.⁵⁵

There are still outstanding proposals from my tenure on universal proxy and the executive compensation rules required by the Dodd-Frank Act.⁵⁶ Views differ on these initiatives, both inside and outside of the Commission. So it is harder to predict where those proposals will sit on the next Chair’s priorities. It also remains to be seen where the next Chair will take the extensive work the staff has done on corporate board diversity disclosures. I do hope that the Staff’s good and sensible recommendation will be advanced.⁵⁷ I do expect the proposed amendments to the definition of a “smaller reporting company” to be adopted, as well as the common-sense proposal on exhibit hyperlinks.⁵⁸

⁵³ See Mary Jo White, Chair, U.S. Securities and Exchange Commission, *Building a Dynamic Framework for Offering Reform* (Oct.28, 2015), Keynote Address at the 47th Annual Securities Regulation Institute, available at <http://www.sec.gov/news/speech/building-dynamic-framework-for-offering-reform.html>.

⁵⁴ See Renaissance Capital LLC, *U.S. IPO Market 2016 Annual Review* (Jan. 3, 2017), available at http://www.renaissancecapital.com/profile/showpdf.aspx?filename=2016usreview&inf_contact_key=73804c6d927e12ffb5a6d57e4dbdc7b28d5c16f78a4c1f23d481b41fd33dbc68.

⁵⁵ See e.g., Release No. 34-74892, *Order Approving the National Market System Plan to Implement a Tick Size Pilot Program* (May 13, 2015), available at <https://www.sec.gov/rules/sro/nms/2015/34-74892-exa.pdf>.

⁵⁶ See Release Nos. 34-79164; IC-32339, *Universal Proxy* (Oct. 26, 2016), available at <http://www.sec.gov/rules/proposed/2016/34-79164.pdf>; Release No. 33-9723, *Disclosure of Hedging by Employees, Officers and Directors* (Feb. 9, 2015), available at <http://www.sec.gov/rules/proposed/2015/33-9723.pdf>; Release No. 34-74835, *Pay Versus Performance* (Apr. 29, 2015), available at <http://www.sec.gov/rules/proposed/2015/34-74835.pdf>; and Release No. 33-9861, *Listing Standards for Recovery of Erroneously Awarded Compensation* (July 1, 2015), available at <http://www.sec.gov/rules/proposed/2015/33-9861.pdf>; Release No. 34-77776, *Incentive-based Compensation Arrangements* (May 6, 2016), available at <http://www.sec.gov/rules/proposed/2016/34-77776.pdf>.

⁵⁷ See Mary Jo White, Chair, U.S. Securities and Exchange Commission, *Focusing the Lens of Disclosure to Set the Path Forward on Board Diversity, Non-GAAP, and Sustainability* (Jun. 27, 2016), Keynote Address, International Corporate Governance Network Annual Conference, available at <http://www.sec.gov/news/speech/chair-white-icgn-speech.html>.

⁵⁸ See Release No. 33-10107, *Amendments to Smaller Reporting Company Definition* (Jun. 27, 2016), available at <http://www.sec.gov/rules/proposed/2016/33-10107.pdf>; and Release Nos. 33-10201, *Exhibit Hyperlinks and HTML Format* (Aug. 31, 2016), available at <http://www.sec.gov/rules/proposed/2016/33-10201.pdf>.

Beyond these outstanding proposals, there will likely be renewed interest in proxy advisory firms and the proxy process more generally. Non-GAAP financial measures will also continue to receive attention from Corporation Finance and the Office of the Chief Accountant.

Forecasting other areas for the Commission's agenda is more challenging, but I will risk gazing a bit more deeply into my crystal ball. First, I think that the fixed income markets will continue to receive increased attention, especially as the interest rate environment changes.⁵⁹ FINRA and the MSRB took important steps on best execution and mark-ups, but there is still more work to be done there. Pre-trade price transparency is a very significant issue and will continue to be a focus.

It is also quite likely that the work the Commission began on the cash Treasury markets will continue. FINRA will continue to build a program for post-trade transparency with, I believe, the continued support of the Commission and the banking regulators. And I think the staff and new Commission will focus on remedying the gaps in SEC oversight over major Treasury trading platforms and trading firms.⁶⁰

Clearance and settlement will also see activity – this infrastructure is obviously at the heart of the securities markets, and it is incumbent on any Commission to ensure that it runs smoothly and effectively. The Commission adopted strong new standards for the operation of clearing agencies under my tenure, and I hope that work continues.⁶¹ The broad-based push for T+2 settlement across the industry will certainly continue, and I would expect the Commission, even before it is at full strength, to move forward with a final rule.⁶²

The next Commission will, I believe, also likely support further efforts to enhance the financial responsibility rules for broker-dealers, beyond the improvements put into place during my tenure. In particular, the staff has been working to prepare updates for all clearing broker-dealers, which would enhance their capital and liquidity requirements as well as formalize certain stress tests.

⁵⁹ See Mary Jo White, Chair, U.S. Securities and Exchange Commission, *Prioritizing Regulatory Enhancements for the U.S. Treasury Market* (Oct. 24, 2016), Keynote Address at the Second Annual Conference on the Evolving Structure of the U.S. Treasury Market, Second Annual Conference, Federal Reserve Bank of New York, available at <http://www.sec.gov/news/speech/white-keynote-us-treasury-market-conference-102416.html> (“2016 Treasury Market Speech”); Mary Jo White, Chair, U.S. Securities and Exchange Commission, *Taking Stock of Treasury Market Regulation* (Oct. 20, 2015), Keynote Address at the Evolving Structure of the U.S. Treasury Market Conference, Federal Reserve Bank of New York, available at <http://www.sec.gov/news/speech/taking-stock-of-treasury-market-regulation.html>; Mary Jo White, Chair, U.S. Securities and Exchange Commission, *Intermediation in the Modern Securities Markets: Putting Technology and Competition to Work for Investors* (Jun. 20, 2014), Economic Club of New York, available at <http://www.sec.gov/News/Speech/Detail/Speech/1370542122012>.

⁶⁰ See 2016 Treasury Market Speech.

⁶¹ See Release No. 34-78961, *Standards for Covered Clearing Agencies* (Sep. 28, 2016), available at <http://www.sec.gov/rules/final/2016/34-78961.pdf>. The Commission has also proposed to expand these standards to cover other registered clearing agencies. See Release No. 34-78963, *Definition of “Covered Clearing Agency”* (Sep. 28, 2016), available at <http://www.sec.gov/rules/proposed/2016/34-78963.pdf>.

⁶² See Release No. 34-78962, *Amendment to Securities Transaction Settlement Cycle* (Sep. 28, 2016), available at <http://www.sec.gov/rules/proposed/2016/34-78962.pdf>.

Finally, there are some areas where it remains to be seen whether they will receive the attention and priority that I believe they deserve from the Commission going forward. Asset management is at the top. I believe continuing to build on our work to create a stronger and more comprehensive regime for investment adviser examinations is one of the most pressing challenges facing the agency. While our staff reorganization helped better deploy limited resources, additional measures are required to meet the challenge of stronger compliance by, and more comprehensive oversight of, all advisers. And, though there was not sufficient support within the three-person Commission to proceed with the staff's recommendation to require periodic third-party compliance assessments,⁶³ I am hopeful that a full Commission will address the pressing need and proceed with this critical initiative. The insufficient coverage of investment advisers in our examination program puts investors, particularly the most vulnerable, at high risk.

Similarly, while the Commission has made tremendous progress on modernizing the regulation of asset management, it is important to complete the work that we started – there are important initiatives not just on derivatives, but also on transition planning and stress tests, that should be carried forward.⁶⁴ The Commission has done a very good job as the primary regulator of asset managers for more than 75 years, and that is due in no small part to the clear-eyed review and updates to its regulatory program that have been undertaken over the years. That commitment should continue.

So too should, in my view, the work on a uniform fiduciary duty. There are many ways to address the differences between the broker-dealer and adviser model, and to mitigate the conflicts of interest inherent in both. Whether it is proceeding under Section 913 of the Dodd-Frank Act or through other means, it is vital that the Commission grapple with the hard choices demanded by this issue – few matters are more important to the individual investor.

Once again, before I conclude, let me touch briefly on enforcement in a new Commission. In general, strong enforcement is a bipartisan issue – punishing the bad guys and stopping entities that harm investors always garners broad agreement. The reasons are obvious – it is our duty as Commissioners to enforce the law, and a strong enforcement program serves to provide a lasting and continuing form of protection for investors. It is a good and the right thing to do. The unanimous support by the Commission of nearly all enforcement actions reflects that reality and the agency's commitment to these principles.⁶⁵ In a new Commission, there may be some differences in views about the appropriate parameters for assessing corporate penalties or certain theories of liability, but there should be unanimity on the core presumption: there cannot be credible regulation of the securities industry and markets without strong enforcement of the federal securities laws and SEC rules.

⁶³ December Letter.

⁶⁴ See Mary Jo White, Chair, U.S. Securities and Exchange Commission, *Enhancing Risk Monitoring and Regulatory Safeguards for the Asset Management Industry* (Dec. 11, 2014), available at <http://www.sec.gov/News/Speech/Detail/Speech/1370543677722>.

⁶⁵ See e.g., S. Lynch, *Oft-divided SEC speaks with one voice when suing corporations*, Reuters, (Oct. 27, 2016), available at <http://www.reuters.com/article/us-sec-enforcement-votes-idUSKCN12R22Y>.

A Final Observation

As most of you know, the Commission has not been at its full strength since October 2015. Indeed, when I stepped down on Friday, there had been a Commission of only three for over a year. Now, of course, there are only two members. While as a legal matter, the Commission can proceed with all of its business in its current configuration of two, it must be unanimous in every instance. And, as you may have observed, unanimity has not been as common a state of affairs as I would have liked during my tenure. The current Commission may well also decide that, as a matter of prudence, to defer certain actions while there are only two members even in areas of agreement.

No doubt there could be progress on some, non-controversial issues with only two seats filled. There are a number of such items, which I described today, that I left ready to advance. But an optimally functioning Commission requires a permanent Chair and four Commissioners, and I urge our new President and Congress to work expeditiously toward that goal so that the agency can fully deliver on its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Conclusion

It has been a high honor for me to serve as Chair of the Securities and Exchange Commission for these last, nearly four years. As a private citizen, I will now join with you in continuing to demand that we have a strong, independent, and fully resourced SEC. It is the only way we can ensure sensible regulation and oversight of our markets and market participants, the strong enforcement of the securities laws necessary to protect investors, and the vibrancy and integrity of our markets essential to facilitating the capital formation that is the engine of economic growth.

Thank you.