Speech

Remarks at the Economic Club of New York

SEC Chairman Jay Clayton

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Thank you, Terry [Lundgren], for that kind introduction. I am delighted to speak to you here at the Economic Club of New York. The Club has established itself as an esteemed, non-partisan forum for economic discourse. It is an ideal place to discuss policy of the U.S. Securities and Exchange Commission ("SEC" or "the Commission" or "the agency") and its effects on the U.S. economy and the American people. I intend to do just that in this, my first public speech as Chairman of the SEC.[1]

Nearly six months ago, my predecessor Mary Jo White gave her last public address as SEC Chair in this same forum. In her remarks, she stated "I am confident in reporting that the agency is today a stronger protector of investors than ever before and much better equipped to meet the challenges of the fast-paced, complex, and interconnected securities markets of 2017."[2] I am pleased — and thankful — to say that I agree with Chair White. When I arrived at the Commission, I made it a priority to meet with staff across the agency. With each meeting, I became more impressed by the breadth of issues my 4,600 colleagues cover, and even more, by their dedication.

The Dodd-Frank Act of 2010[3] required the SEC to complete an unprecedented array of congressionally mandated rulemakings — all on top of the agency's usual work. Under Chair White's leadership, the Commission made great strides, adopting a number of the rules with which it was charged. Admittedly, there are still Dodd-Frank mandates to be completed. But I have inherited an agency with considerably more discretion over its agenda.

Today, I will share my perspective on the Commission and the principles that should guide where we go from here. I will then talk about some of the specific areas where I believe the agency should take action in the near-term to further its mission.

I. Guiding Principles

I believe in a model of leadership that is rooted in principles. I want to outline eight principles that will guide my SEC Chairmanship.[4]

A. Principle #1: The SEC's mission is our touchstone.

The SEC has a three-part mission: (1) to protect investors, (2) to maintain fair, orderly, and efficient markets, and (3) to facilitate capital formation. Each tenet of that mission is critical. If we stray from our mission, or emphasize one of the canons without being mindful of the others, investors, companies (large and small), the U.S. capital markets, and ultimately the economy will suffer.

B. Principle #2: Our analysis starts and ends with the long-term interests of the Main Street investor.

How does the SEC assess whether we are being true to our three-part mission? The answer: the long-term interests of the Main Street investor. Or, as I say when I walk the halls of the agency, how does what we propose to do affect the long-term interests of Mr. and Ms. 401(k)? Are these investors benefitting from our efforts? Do they have appropriate investment opportunities? Are they well informed? Speaking more granularly: what can the Commission do to cultivate markets where Mr. and Ms. 401(k) are able to invest in a better future?

I am confident this is the right lens for our analysis; and the one the American people would want the Commission to use. I am also confident that the women and men of the SEC share this perspective.

C. Principle #3: The SEC's historic approach to regulation is sound.

Disclosure and materiality have been at the heart of the SEC's regulatory approach for over eighty years. As my colleague, Commissioner Michael Piwowar, recently said, "Unlike merit-based regimes, our system of disclosure comports well with American traditions ... By arming investors with information, they can evaluate and make investment decisions that support more accurate valuations of securities and a more efficient allocation of capital."[5] The Commission, following the guidance of the Supreme Court, should continue to strive to ensure that investors have access to a well-crafted package of information that facilitates informed decision-making.[6]

In addition to disclosure-based rules, the SEC has placed heightened responsibilities on people and organizations that are central to, or actively participate in, our securities markets. The rules that apply to securities exchanges, clearing agencies, broker-dealers, and investment advisers (to name a few) protect markets and investors where information and market forces alone may not be enough.

The third leg of the stool — the anti-fraud regime established by Congress and the Commission — acts as a back-stop to the aforementioned disclosure rules and oversight systems. The government can bring to bear its extensive enforcement capabilities on those who try to circumvent established investor protections or otherwise engage in deceptive or manipulative acts in the markets.

In sum, I believe in the regulatory architecture that has governed the securities markets since 1933. It is abundantly clear that wholesale changes to the Commission's fundamental regulatory approach would not make sense.

D. Principle #4: Regulatory actions drive change, and change can have lasting effects.

Incremental regulatory changes may not seem individually significant, but, in the aggregate, they can dramatically affect the markets. For example, our public company disclosure and trading system is an incredibly powerful, efficient, and reliable means of making investment opportunities available to the general public. In fact, this disclosure-based regime has worked so well that we — not just the SEC, but lawmakers and other regulators — have slowly but significantly expanded the scope of required disclosures beyond the core concept of materiality. Those actions have been justified by regulators and lawmakers alike, often based on discrete, direct and indirect benefits to specific shareholders or other constituencies. And it has often been concluded that these benefits outweigh the marginal costs that are spread over a broad shareholder base.

But the roughly 50% decline in the total number of U.S.-listed public companies over the last two decades[7] forces us to question whether our analysis should be cumulative as well as incremental. I believe it should be. As a data point, over this period, studies show the median word-count for SEC filings has more than doubled, yet readability of those documents is at an all-time low.[8]

While there are many factors that drive the decision of whether to be a public company, increased disclosure and other burdens may render alternatives for raising capital, such as the private markets, increasingly attractive to companies that only a decade ago would have been all but certain candidates for the public markets. And, fewer small and medium-sized public companies may mean less liquid trading markets for those that remain public. Regardless of the cause, the reduction in the number of U.S.-listed public companies is a serious issue for our markets and the country more generally. To the extent companies are eschewing our public markets, the vast majority of Main Street investors will be unable to participate in their growth. The potential lasting effects of such an outcome to the economy and society are, in two words, not good.

E. Principle #5: As markets evolve, so must the SEC.

Continuing with the theme of change, technology and innovation are constantly disrupting — in mostly positive ways — the manner in which markets work and investors transact. The SEC must recognize this and strive to ensure that our rules and operations reflect the realities of our capital markets. As my colleague Commissioner Kara Stein has noted, "We need to take into account new tensions, risks, uncertainties, and conflicts."[9]

While this dynamic atmosphere presents challenges, it also provides opportunities for improvements and efficiencies. It is our job as regulators to find these. Technology is not just the province of those we regulate. The SEC has the capability to develop and utilize it, too. We apply sophisticated analytic strategies to detect companies and individuals engaging in suspicious behavior. We are adapting machine learning and artificial intelligence to new functions, such as analyzing regulatory filings.

As the SEC evolves alongside the markets, however, we must remember that implementing regulatory change has costs. Companies spend significant resources building systems of compliance, hiring personnel to operate those systems, seeking legal advice concerning the design and effectiveness of those systems, and adapting the systems as regulations change. Shareholders and customers bear these costs, which is something that should not be taken lightly, lest we lose our credibility as regulators.

F. Principle #6: Effective rulemaking does not end with rule adoption.

With respect to rulemaking, the SEC has developed robust processes for obtaining public input and is committed to performing rigorous economic analyses of our rules, at both the proposing and adopting stages. These efforts are critical to identifying the benefits and costs of regulatory actions, including situations where a rule's effects may not be consistent with expectations. But we should not stop there.

The Commission should review its rules retrospectively. We should listen to investors and others about where rules are, or are not, functioning as intended. We cannot be shy about being introspective and self-critical.

G. Principle #7: The costs of a rule now often include the cost of demonstrating compliance.

Rules are meant to be followed, and the public depends on regulators to make sure that happens. It is incumbent on the Commission to write rules so that those subject to them can ascertain how to comply and — now more than ever — how to demonstrate that compliance. Vaguely worded rules can too easily lead to subpar compliance solutions or an overinvestment in control systems. We must recognize practical costs that are sure to arise. For example, when the SEC requires a Chief Executive Officer to make a certification that a specific requirement has been met, while he or she retains ultimate responsibility, realistically, it should be expected that the responsibility will be supported through the chain of command in a demonstrable manner. This can be an expensive practice that goes well beyond a prudent management and control architecture; when third parties, such as auditors, outside counsel, and consultants, are involved, the costs — financial costs and, in many ways more important, the cost in terms of time — can skyrocket. This may be the appropriate regulatory approach, and to be clear, in some areas I think it is. However, the Commission needs to make sure at the time of adoption that we have a realistic vision for how rules will be implemented as well as how we and others intend to examine for compliance.

H. Principle #8: Coordination is key.

Last, the SEC shares the financial services space with many other regulatory players charged with overseeing related or overlapping industries and market participants.[10] The Commission works alongside more than 15 U.S. federal regulatory bodies, over 50 state and territory securities regulators, the Department of Justice, state attorneys general, self-regulatory organizations ("SROs"), and non-SRO standard setting entities. We also participate in several major international bodies and cooperate with regulators in over 115 foreign jurisdictions. Coordination with, between, and among *all* these organizations is essential to a well-functioning regulatory environment.

One such area where coordination is essential is our regulatory scheme governing over-the-counter derivatives. Congress established, through Title VII of the Dodd-Frank Act, a dual regulatory structure for these instruments: the SEC was assigned authority over "security-based swaps," and the Commodity Futures Trading Commission ("CFTC") was assigned authority over "swaps." For this structure to be effective, there must be close coordination between the SEC and CFTC. I am fully committed to that. I am also committed to working with the CFTC to explore ways in which the agencies can achieve greater harmonization of Title VII rules and reduce unnecessary complexity as well as costs to both regulators and market participants. Having said that, importantly, all such efforts will need to take into account statutory variances as well as differences in products and markets.

Speaking more generally, cybersecurity is also an area where coordination is critical.[11] Information sharing and coordination are essential for regulators to address potential cyber threats and respond to a major cyberattack, should one arise. The SEC is therefore working closely with fellow financial regulators to improve our ability to receive critical information and alerts and react to cyber threats.[12]

II. Putting Principles into Practice

Let's turn from principles to practice. There are some particular places where I see opportunities to apply these principles to the SEC's agenda.

A. Enforcement and Examinations

The SEC has strong and active enforcement and examination programs. I fully intend to continue deploying significant resources to root out fraud and shady practices in the markets, particularly in areas where Main Street investors are most exposed. Terms like "affinity fraud" and "microcap fraud" sound unremarkable and remote on paper, but they are sinister behaviors that strike at Americans' vulnerabilities.

Investors should know that the SEC is looking out for them. In this regard, we are taking further steps to find and eliminate from our system pump-and-dump scammers, those who prey on retirees, and increasingly those who use new technologies to lie, cheat, and steal. Turning to the more sophisticated participants in our markets, the Commission will continue to use its enforcement and examination authority to support market integrity. We are committed to making our markets as fair, orderly, and efficient — and as liquid — as possible. I know market professionals are critical to, and enhance, the operation of our markets. I also know they know the rules and principles, and I expect them to adhere to and be guided by them. You have a special place in our economy, do not take unfair advantage of it.

As a final comment on enforcement, I want to go back to cybersecurity. Public companies have a clear obligation to disclose material information about cyber risks and cyber events. I expect them to take this requirement seriously. I also recognize that the cyber space has many bad actors, including nation states that have resources far beyond anything a single company can muster. Being a victim of a cyber penetration is not, in itself, an excuse. But, I think we need to be cautious about punishing responsible companies who nevertheless are victims of sophisticated cyber penetrations. Said another way, the SEC needs to have a broad perspective and bring proportionality to this area that affects not only investors, companies, and our markets, but our national security and our future.

B. Capital Formation

I have been vocal about my desire to enhance the ability of every American to participate in investment opportunities, including through the public markets. I also want American businesses to be able to raise the money they need to grow and create jobs. As I mentioned earlier, evidence shows that a large number of companies, including many of our country's most innovative businesses, are opting to remain privately held. Just yesterday I met with a broad group of businesses at different stages of capital raising and heard firsthand about the regulatory requirements and other considerations that factor into their decision to stay private or go public. One message was loud and clear: private markets operate well in many sectors and, in these areas, they offer a very attractive alternative to the public markets. I believe we need to increase the attractiveness of our public capital markets without adversely affecting the availability of capital from our private markets.

As an agency, we have learned a great deal while implementing the JOBS Act on-ramp for emerging growth companies ("EGCs").[13] The JOBS Act allows issuers with less than roughly $1 billion in revenue to submit their draft registration statements *confidentially* and phase in their reporting obligations *gradually*. This regime has had a clear appeal to EGCs. Since the enactment of the JOBS Act, approximately 87% of the initial public offerings ("IPOs") that have gone effective were for EGCs, and the vast majority of these companies have relied to some extent on the confidentiality and gradation components of the JOBS Act.[14]

Starting this past Monday, the JOBS Act approach is accessible more broadly. The SEC's Division of Corporation Finance non-public review process is now open to IPO draft registration statements from larger domestic and non-U.S. companies that do not qualify as EGCs.[15] I hope that allowing these companies to submit their sensitive information on a non-public basis while the Commission staff reviews their draft offering documents will encourage them to find the prospect of selling their shares in the U.S. public markets more attractive generally, and at an earlier stage in their development.[16]

My last point on capital formation is a reminder. There are circumstances in which the Commission's reporting rules may require publicly traded companies to make disclosures that are burdensome to generate, but may not be material to the total mix of information available to investors. Under Rule 3-13 of Regulation S-X, issuers can request modifications to their financial reporting requirements in these situations. I want to encourage companies to consider whether such modifications may be helpful in connection with their capital raising activities and assure you that SEC staff is placing a high priority on responding with timely guidance.

C. Market Structure

Regarding equity market structure, an enormous amount of thought — at the Commission, in Congress, and in the private sector — has been devoted to this topic. While there are certainly challenging issues that merit further consideration, it is time to shift the focus to action. One recommendation where there is broad consensus to proceed is the launch of a pilot program to test how adjustments to the access fee cap under Rule 610 of the Securities Exchange Act of 1934 would affect equities trading.[17] Such a pilot should provide the Commission with more data to assess the effects of access fees and rebates — including "maker-taker" and other pricing systems — on liquidity provision, liquidity taking, and order routing. These, in turn, affect the functioning of markets and investor welfare. I expect the Commission will consider a proposal of this type in the coming months.

The SEC's Equity Market Structure Advisory Committee ("EMSAC") has provided the Commission with valuable perspectives on these and many other issues. The committee's charter is set to expire next month. My hope is that EMSAC's tenure is extended into 2018.

Let me make one additional point about market structure. The time is right for the SEC to broaden its review of market structure to include specifically the efficiency, transparency, and effectiveness of our *fixed income* markets. As waves of Baby Boomers retire every month and need investment options, fixed income products, which are viewed as a stable place to store hard-earned money, will attract more and more Main Street investors. Yet, many of those investors may not appreciate that fixed income products are part of markets that differ significantly from the better-known equities markets.

The Commission must explore whether these markets are as efficient and resilient as we expect them to be, scrutinize our regulatory approach, and identify opportunities for improvement. To that end, I have asked the staff to develop a plan for creating a Fixed Income Market Structure Advisory Committee. Like the EMSAC, this committee would be made up of a diverse group of outside experts, who will be asked to give advice to the Commission on the regulatory issues impacting fixed income markets. I am also pleased to note that this week, Chairman Hensarling and Chairman Huizenga of the House Financial Services Committee and its subcommittee on Capital Markets, Securities, and Investment have called for a hearing on fixed income market structure,[18] and I look forward to working with Congress on these issues.

D. Investment Advice and Disclosures to Investors

1. Fiduciary Rule

Another area that has been the subject of extensive study is the standards of conduct that investment professionals must follow in providing advice to Main Street investors. With the Department of Labor's Fiduciary Rule now partially in effect, it is important that the Commission make all reasonable efforts to bring clarity and consistency to this area. It is my hope that we can act in concert with our colleagues at the Department of Labor in a way that best serves the long-term interests of Mr. and Ms. 401(k).

There is a lot of work to do, and this issue is complex. That should not deter us, and we are moving forward. In June, I issued a statement seeking public input on standards of conduct for investment advisers and broker-dealers.[19] The Commission had last solicited information on this issue four years ago. Suffice it to say a lot has happened since then. Robust public comment can help us evaluate potential regulatory actions in light of current market activities and risks. And, any action will need to be carefully constructed, so it provides appropriate and meaningful protections but does not result in Main Street investors being deprived of affordable investment advice or products. I encourage the public to send us feedback and any data that may be helpful to us. Instructions for how to submit this information are available on www.sec.gov.

2. Improving Disclosure to Investors

Regardless of whether investors participate in our markets directly or indirectly, and with or without investment advice, it is clear that they and their advisors must have access to information about potential investments that is easily accessible and meaningful. The Commission has several initiatives underway to improve the disclosure available to investors. For example, last November, the SEC staff issued a report recommending ways to modernize and simplify Regulation S-K disclosure rules.[20] This report also included recommendations on how to improve the readability and the navigability of disclosure. The staff is making good progress on preparing rulemaking proposals based on this report for the Commission.

E. Resources to Educate Investors

No matter how robust our enforcement and examination programs, the reality is that the SEC cannot be everywhere. The agency has exceptional tools that can help investors research professionals giving them investment advice, spot signs of fraud, and take action to protect themselves.

A priority for me is getting the wealth of information that the SEC has into the hands of investors, through whatever means can reach them. Among other things, we are leveraging technology to do this, including conducting data analyses to assess how individual investors interact with the SEC and where and how we can increase engagement. Commission staff also has efforts underway to simplify and enhance resources to educate investors on how to conduct online background searches on investment professionals and make informed decisions about whether to establish financial relationships. In this regard, I have a short but important message for Main Street investors: the best way to protect yourself is to check out who you are dealing with, and the SEC wants to make that easier.[21]

III. Conclusion

In my seventy days since joining the SEC, I have become aware of some of the challenges ahead. The Commission has no choice but to face any challenges — both the ones we know and those we will come to know — head-on. As we take that journey, I am fortunate to be surrounded by a tremendously talented set of public servants in the SEC staff and my fellow Commissioners. I aim to apply a level of dedication and hard work that matches their own.

Thank you.

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[1] My words are my own and do not necessarily reflect the views of my fellow Commissioners or the SEC staff.

[2] Chair Mary Jo White, "The SEC after the Financial Crisis: Protecting Investors, Preserving Markets" (January 17, 2017), https://www.sec.gov/news/speech/the-sec-after-the-financial-crisis.html.

[3] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111–203, 124 Stat. 1376 (the "Dodd-Frank Act").

[4] On February 3, 2017, President Donald J. Trump issued an executive order setting forth seven "core principles" intended to form the basis for his administration's regulation of the U.S. financial system. *See* Presidential Executive Order on Core Principles for Regulating the United States Financial System (February 3, 2017), https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-executive-order-core-principles-regulating-united-states. I believe the principles articulated here are consistent with, and complementary to, the broader principles for financial regulation set forth by the President.

[5] Acting Chairman Michael S. Piwowar, "Remarks at the "SEC Speaks" Conference 2017: Remembering the Forgotten Investor" (February 24, 2017), https://www.sec.gov/news/speech/piwowar-remembering-the-forgotten-investor.html. *See also* Commissioner Daniel M. Gallagher, "Remarks to the Forum for Corporate Directors, Orange County, California" (January 24, 2014), https://www.sec.gov/news/speech/2014-spch012413dmg ("The SEC is, first and foremost, a disclosure agency. Our bedrock premise is that public companies should be required to disclose publicly and in a timely fashion the information a person would need in order to make a rational and informed investment decision.").

[6] *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.…Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."). *See also Basic Inc. v. Levinson*, 485 U.S. 224 (1988).

[7] The total number of listed companies in 2016 was approximately 4,300, compared to about 8,100 in 1996. Commission staff produced these estimates using data from the Center for Research in Securities Prices US Stock and US Index Databases (2016), The University of Chicago Booth School of Business.

[8] *See*, *e.g.*, Travis Dyer, Mark Lang, Lorien Stice-Lawrence, "The Evolution of 10-K Textual Disclosure: Evidence from Latent Dirichlet Allocation" (October 2016). *See also* SEC Office of the Investor Advocate, "Report on Objectives: Fiscal Year 2017" (June 30, 2016), https://www.sec.gov/advocate/reportspubs/annual-reports/sec-office-investor-advocate-report-on-objectives-fy2017.pdf, at 5 ("Given the important role of disclosure, the requirements for various types of disclosure are robust. As a result, an S-1 or 10-K can be hundreds of pages

long, and the length and complexity of the disclosures has led many to question whether the disclosure requirements are properly calibrated to effectively communicate all material information to investors while eliminating immaterial, outdated, or duplicative data that may dilute the impact of the more meaningful disclosures.").

[9] Commissioner Kara M. Stein, "Remarks at the Meeting of the Equity Market Structure Advisory Committee" (April 26, 2016), https://www.sec.gov/news/statement/stein-statement-emsac-042616.html.

[10] As the Treasury Department recently noted in its first core principles report, "Increased coordination on the part of [financial] regulators will identify problem areas and help [them] prioritize enforcement actions." U.S. Dept. of Treasury, "A Financial System that Creates Economic Opportunities: Banks and Credit Unions" (June 2017), at 10, https://www.treasury.gov/press-center/press-releases/Documents/A%20Financial%20System.pdf.

[11] *See id.* at 123.

[12] The SEC is a member of the Financial and Banking Information Infrastructure Committee.

[13] The Jumpstart Our Business Startups Act, Pub. L. 112-106, H.R. 3606 (the "JOBS Act"), http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf.

[14] *See* Ernst & Young LLP, "Update on emerging growth companies and the JOBS Act" (November 2016), http://www.ey.com/Publication/vwLUAssets/ey-update-on-emerging-growth-companies-and-the-jobs-act-november-2016/$FILE/ey-update-on-emerging-growth-companies-and-the-jobs-act-november-2016.pdf , at 6.

[15] *See* "SEC's Division of Corporation Finance Expands Popular JOBS Act Benefit to All Companies" (June 29, 2017), https://www.sec.gov/news/press-release/2017-121. *See also* SEC Division of Corporation Finance, "Voluntary Submission of Draft Registration Statements – FAQs" (last modified June 30, 2017), https://www.sec.gov/corpfin/voluntary-submission-draft-registration-statements-faqs.

[16] The Division of Corporation Finance will also accept draft registration statements for non-public review for many companies throughout their first year in the SEC's reporting system. This is meant to encourage newly reporting companies to explore follow-on capital raises in the public markets, which could present additional investment opportunities for retail investors and add liquidity to a newly public company's shares. *See id.* The experience with the JOBS Act confidential review process demonstrates that this approach is fully consistent with investor protection. Companies are still required to publicly file their disclosure documents well before they begin their "road shows." That said, in the spirit of being retrospective, I am open to continuing to examine whether the SEC has struck an appropriate balance between the capital formation and investor protection tenets of our mission.

[17] SEC Equity Market Structure Advisory Committee, "Recommendation for an Access Fee Pilot" (July 8, 2016), https://www.sec.gov/spotlight/emsac/recommendation-access-fee-pilot.pdf.

[18] *See* Hearing of the House of Representatives Committee on Financial Services, "A Review of Fixed Income Market Structure" (scheduled for July 14, 2017), https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402101.

[19] Statement of SEC Chairman Jay Clayton, "Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers" (June 1, 2017), https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31.

[20] SEC Division of Corporation Finance, "Report on Modernization and Simplification of Regulation S-K" (November 23, 2016), https://www.sec.gov/files/sec-fast-act-report-2016.pdf. This report was required by Section 72003 of the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, 129 Stat. 1312 (2015).

[21] The agency is trying different approaches. For example, in addition to our ongoing efforts to create and disseminate educational content through www.investor.gov and other platforms designed for retail investors, we recently posted a short video on the SEC website that includes tips for investors to avoid falling victim to fraud.

See SEC Office of Investor Education and Advocacy, “Straight Talk: From the SEC” (June 29, 2017), https://investor.gov/additional-resources/specialized-resources/public-service-campaign.