EXAMINING THE SEC'S AGENDA, OPERATIONS, AND FY 2016 BUDGET REQUEST

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EXAMINING THE SEC'S AGENDA, OPERATIONS, AND FY 2016 BUDGET REQUEST

Tuesday, March 24, 2015

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 9:49 a.m., in room HVC–210, Capitol Visitor Center, Hon. Jeb Hensarling [chairman of the committee] presiding.

Members present: Representatives Hensarling, King, Royce, Lucas, Garrett, Neugebauer, McHenry, Pearce, Posey, Fitzpatrick, Westmoreland, Luetkemeyer, Huizenga, Duffy, Hurt, Stivers, Fincher, Stutzman, Mulvaney, Hultgren, Ross, Pittenger, Wagner, Barr, Rothfus, Schweikert, Dold, Guinta, Tipton, Williams, Poliquin, Love, Hill; Waters, Maloney, Velazquez, Sherman, Capuano, Lynch, Green, Cleaver, Moore, Ellison, Himes, Carney, Sewell, Kildee, Sinema, Beatty, Heck, and Vargas.

Chairman HENSARLING. The Financial Services Committee will come to order. Without objection, the Chair is authorized to declare a recess of the committee at any time.

Today's hearing is entitled, "Examining the SEC's Agenda, Operations, and FY 2016 Budget Request." I now recognize myself for 3 minutes for an opening statement.

This morning we welcome Securities and Exchange Commission Chair Mary Jo White back to the committee. This committee is indeed committed to conducting vigorous oversight to make certain that the SEC is accountable in fulfilling its three-part mission of protecting investors; maintaining fair, orderly, and efficient markets; and promoting capital formation. By holding today's hearing, we hope to better understand the progress the Commission is making in its priorities for the remainder of the year.

Now, I have no doubt the hearing will serve as deja vu all over again for Members who argue that the SEC has inadequate resources with which to carry out its mission. However, the facts are that the SEC's budget has grown tremendously over the years. In fact, the SEC's current budget of $1.5 billion represents an increase of almost 35 percent since the passage of the Dodd-Frank Act not yet 5 years ago. And, in fact, over a 20-year period, since 1995, the SEC's budget has increased nearly 400 percent, and that is 3 times greater—3 times greater—than our national defense budget has grown at a time when we have to fight the international war on terror. This growth in the SEC's budget considerably outstrips most other government agencies over the similar time period.

Furthermore, as I look to the monitors to my left and my right which show the rapidly rising and unsustainable red ink of our national debt, a debt that threatens to bankrupt our Nation, I am reminded that the hardworking Texans of the Fifth District of Texas whom I represent have not had the privilege of seeing their family budgets increase fourfold, and they are the ones who ultimately will have to pay for this unsustainable debt, which again underscores that in Washington, it is not always how much money you spend that counts, it is how you spend the money. And that leads to the SEC's priorities and agenda for 2015.

The bipartisan JOBS Act should be a priority, but regrettably it does not appear the SEC treats it as such. In a time when the American people continue to struggle with the slowest, weakest recovery of the postwar era, the SEC's neglect of this makes no sense. Even President Obama, with whom I rarely agree, has called the JOBS Act, "a big bill," and a "potential game-changer that will help smaller companies take a major step towards expanding and hiring more workers." Surely we want companies on Main Street to hire more workers. So if the SEC will not finish the work on the JOBS Act, it is incumbent that Congress do it for them.

Likewise, the SEC's delay in completing its Dodd-Frank mandates, particularly in the derivatives area, has caused unnecessary uncertainty and allowed the Commodity Futures Trading Commission (CFTC) to dictate outcomes that I believe most Members of Congress did not intend.

So as we discuss the SEC's budget request today, our goal, as always, is accountability. It is this committee's duty to ensure that SEC resources are used wisely and efficiently and for the benefit of the American people.

I now yield 2 minutes to the ranking member of our Capital Markets Subcommittee, the gentlelady from New York, Mrs. Maloney.

Mrs. MALONEY. Thank you so much, Mr. Chairman.

And welcome, Chair White.

The United States has by far the largest and deepest capital markets in the world. We also rely much more heavily on the capital markets as opposed to loans through commercial banks than any other developed country in the world. This makes the SEC, which is our primary capital markets regulator, one of the most important regulators in the world.

Because of the breadth of activities that it regulates, the SEC must constantly evolve and adapt its regulations in order to respond to new innovations and trends in the markets. Sometimes this means modernizing a regulatory regime to take account of these new risks in the market. This is precisely what the SEC is doing in two of the most important areas of the markets: asset management; and equity market structure. Both of these areas have undergone significant change in recent years, and the SEC, under Chair White's leadership, has initiated ambitious efforts to update the regulations governing asset managers and equity markets.

It is worth noting that both of these regulatory initiatives reflect a greater focus by the Commission on the issue of systemic risk, which is an important and welcomed development. I look forward to hearing an update on these important initiatives, as well as a potential timeline for moving these initiatives forward.

Thank you. My time has expired.

Chairman HENSARLING. The Chair now recognizes the gentleman from New Jersey, Mr. Garrett, chairman of our Capital Markets Subcommittee.

Mr. GARRETT. Thank you, Mr. Chairman.

The SEC is responsible for regulating the equity and fixed income markets, which we all know are vital for economic growth and the well-being of millions of hardworking Americans who invest every single day in order to buy a home, pay for their kids' education, fund retirement.

So I was encouraged, Madam Chair, when I read a statement you made earlier this year where you said, "Even though I am a political appointee—as Chair of the SEC—politics really don't come with me." And I was hopeful that under your direction the Commission would finally be able to agree on a regulatory agenda that first and foremost advances only the agency's statutory mission.

Unfortunately, as you know, some assert that the SEC is becoming a little more political and distracted from its core mission. For example, by my count, during your first 2 years as Chair, the Commission has already had 10 partisan 3–to–2 votes on major agency rulemakings, and according to a March 17th press report, "Recent objections by Republican Commissioners to certain SEC enforcement actions are highlighting the increasing partisan divide when it comes to policing bad actors in the financial markets."

So over the last 2 years you have what some would consider "prioritized" thousands of hours and millions of dollars completing some special interest rules, like the CEO pay ratio and the conflicts mineral disclosure rules, and the SEC also recently issued a rule proposed, not called for in the JOBS Act, that has and will continue to deincentivize Reg D. These rules are fundamentally at odds with and distract the SEC from fulfilling its statutory mission.

To see this, one must look no further than the SEC's lack of meaningful progress on some critical activities such as reforming the structure of U.S. fixed income markets, finalizing the remaining provisions of the JOBS Act, conducting a comprehensive review to improve U.S. equity markets, and eliminating duplicative, outdated, or unnecessary disclosure requirements, particularly for these public companies.

As your colleague Commissioner Dan Gallagher said, "You are what you prioritize." So it is time for the SEC to prioritize its statutory ambition over the pet projects of some special interest groups and the political staff at the White House.

With that, I yield back.

Chairman HENSARLING. The Chair now recognizes the ranking member for 3 minutes.

Ms. WATERS. Thank you, Mr. Chairman.

And welcome, Chair White.

Chair White, the SEC has a lot on its plate as it works to protect America's investors, young and old. That is why my Democratic colleagues and I support full funding for the Commission.

Chair White, I am pleased that you support a harmonized fiduciary duty rule that will protect America's investors and retirees, but the devil is in the details, and we must take care not to weaken existing protections in pursuit of a uniform standard.

I would also emphasize that while SEC and Department of Labor coordination is important, it is critical to recognize that the two agencies have different jurisdictions and mandates. I share your view that policing of fiduciary rule is vital. However, I support the approach endorsed by the former Republican chairman and Democrats of this committee, industry associations, and advocates to simply pay for more SEC examiners with a modest fee on advisers.

Turning to another retail investor concern, tomorrow the SEC will vote on a rule allowing our small businesses to raise funds in a streamlined offering known as Reg A-Plus. I would like to reiterate that when Congress passed this provision, we rejected the preemption of State regulators, because they have vital expertise in policing these smaller issuances.

Finally, as you and I have discussed, I am concerned with the SEC's seemingly reflexive process of granting waivers of bad actor disqualifications. Currently, every publicly available waiver application has been granted, with large financial firms receiving the vast majority.

This morning I released a draft of my legislation to address this problem by requiring the SEC to implement a more rigorous and more public process for granting waivers. The Bad Actors Disqualification Act would no longer allow the SEC to consider waivers at the staff level, would provide the public a notice-and-comment period, and would require the SEC to keep complete public records. Already, labor, consumer, and financial reform groups have expressed their support for the measure.

So, Chair White, I look forward to working with you on additional steps that the SEC can take to best deter bad actors in the marketplace, and I thank you for the conversations we have already begun. I look forward to working with you.

I yield back the balance of my time.

Chairman HENSARLING. The gentlelady yields back.

Today we welcome the testimony of the Honorable Mary Jo White, Chair of the SEC. Chair White has previously testified before our committee, thus I believe she needs no further introduction.

Without objection, Chair White, your written statement will be made a part of the record, and you are now recognized to give an oral presentation of your testimony. Welcome.

STATEMENT OF THE HONORABLE MARY JO WHITE, CHAIR, U.S. SECURITIES AND EXCHANGE COMMISSION

Ms. WHITE. Thank you, Chairman Hensarling, Ranking Member Waters, and members of the committee. Again, thank you for inviting me to testify about the recent activities and ongoing initiatives of the SEC and our Fiscal Year 2016 budget request.

As you know, and as the chairman said in his opening remarks, the agency's mission is critical to investors, our markets, and companies seeking to raise capital to support our economy. We take our extensive responsibilities very seriously at the SEC.

The U.S. securities markets are high-speed and constantly evolving, and the industries within our jurisdiction are not static. From Fiscal Year 2001 to the start of this fiscal year, assets under management of SEC-registered advisers increased approximately 254 percent, from $17.5 trillion to approximately $62 trillion. Assets under management of mutual funds grew by 143 percent, to $15.6 trillion, and trading volume in the equity markets more than doubled, to over $67 trillion, and the products traded have been become more sophisticated and complex.

During this time the SEC's responsibilities have also dramatically increased with new or expanded jurisdiction over securities-based swaps, private fund advisers, credit rating agencies, municipal advisers, as well as others.

Since I testified before this committee last, the SEC has accomplished a great deal. Informed by rigorous economic analysis, we have made substantial progress in implementing a number of very significant rules, many mandated by the Dodd-Frank Act or the JOBS Act. These are detailed in my written testimony and include fundamental reforms of money market funds, securitizations, credit rating agencies, derivatives, and the integrity and resiliency of our equity markets.

At my direction, the staff is also engaged in a number of very significant ongoing policy initiatives, including a broad equity market structure review focused on high-frequency trading and fairness, market transparency, trading venue regulation, mitigating broker conflicts, and critical market infrastructure, improvements to the market structure for trading fixed income securities, comprehensive measures for enhancing the asset management industry's risk monitoring and regulatory safeguards, and improvements to public company disclosures.

We have continued to aggressively and fairly enforce the securities laws, requiring admissions in appropriate cases, filing 755 enforcement actions, and obtaining orders for more than $4.16 billion in disgorgement and penalties in Fiscal Year 2014.

We have made enhancements to make our examination program more efficient and effective, including adding industry experts, augmenting our data analytics capacities, and strengthening training programs.

The agency's emphasis on technology is also continuing to pay dividends across the agency, improving efficiencies while allowing us to cover more regulatory ground.

The SEC's Fiscal Year 2016 budget request seeks to address our current needs and the challenges we face by providing core resources. The SEC's funding mechanism is deficit-neutral, fully offset by matching collections of nominal securities transaction fees, and will not impact the funding available to other agencies.

As I believe we have demonstrated, we respect congressional oversight of the agency and its budget and our responsibility to be good stewards of the funds we are appropriated.

Specifically, this budget would permit us to further address the pressing need for additional examination coverage of registered investment advisers and investment companies to better protect investors and our securities markets. It would allow us to continue to increase our focus on robust economic risk analysis, to support rulemaking and oversight, and to further bolster our core enforcement functions to better detect, investigate, and prosecute wrongdoing. It would also permit us to continue our efforts to leverage technology, to improve agency programs, reduce filer burden, and enhance the security of the agency's information technology.

Last year was a year of important accomplishments for the SEC, but more remains to be done. Completing our congressional mandates promptly and well remains an important priority. We are continuing all of our work with intensity. Ultimately, our objective is to implement and enforce rules that create a strong and effective regulatory framework that protects investors and our markets and stand the test of time in rapidly changing financial markets.

This committee's support of the agency is very much appreciated. It allows us to build upon the significant progress we have achieved, which I am firmly committed to advancing and expanding. Thank you very much. I would be happy to take your questions.

[The prepared statement of Chair White can be found on page 68 of the appendix.]

Chairman HENSARLING. Thank you, Chair White.

The Chair now yield himself 5 minutes for questioning.

Chair White, in your individual capacity you are a member of FSOC, and then the SEC is a member of the G-20's FSB, correct?

Ms. WHITE. That is correct.

Chairman HENSARLING. I think it was approximately 18 months ago, give or take, that the FSB declared that any financial intermediary not regulated as a bank is part of the "shadow banking system" and must be regulated with bank-like prudential regulations.

So your agency is the primary regulator of many of these entities, including asset managers, investment funds, and broker-dealers. Do you believe that the legislative framework is inadequate for the SEC to comprehensively and competently regulate these entities that the FSB apparently believes needs bank-like prudential regulations?

Ms. WHITE. Speaking for me and the SEC, I don't think that our regulatory framework is deficient. Clearly, if we saw a gap in what we needed to do and needed legislation to do it, we would be saying that.

Chairman HENSARLING. Chair White, when the FSB made this pronouncement, did the SEC object?

Ms. WHITE. Again, if I am thinking of the report in question correctly, what the process is within the SEC, the SEC has been a member of the FSB since 2009, and the staff is on various steering committees and working groups. To the extent that the subject matter pertains to things related to securities, let us say, a report on asset managers or whatever it may be—

Chairman HENSARLING. But this does relate to the securities market. So at some point didn't the SEC either have to consent or object?

Ms. WHITE. What I would need to confirm by getting back to you is the precise report. What we do at the SEC with the FSB final records, to the extent that they relate to anything to do with securities or—

Chairman HENSARLING. If you could get back to this committee, I would like to have—

Ms. WHITE. The Commission is asked to object or not. That is correct.

Chairman HENSARLING. Has the SEC conducted any type of analysis on the impact of bank-like prudential regulation on our capital markets?

Ms. WHITE. In connection with some of our rulemakings, some of our work that our economists do, there is some analysis of that. Clearly we also through the staff, and as you know, I am—

Chairman HENSARLING. And briefly, what is your takeaway from that analysis?

Ms. WHITE. I think there are several takeaways. Obviously, the set-up with FSOC is you can designate a non-bank as systemically significant so that it is subjected to prudential regulation. As part of that process, our staff does provide assistance to the committees of FSOC, but there are a lot of different analyses that are out there.

Chairman HENSARLING. Let me move on to the Volcker Rule. In January of last year, your Division of Investment Management released guidance that said, "Primary dealer inventories of corporate bonds appear to be at an all-time low relative to market size." Late last year The Wall Street Journal reported, "The bond market plumbing is clogged. Investment banks have pulled back from market-making due to regulation." In February of this year Bloomberg reported, "Bond traders are vanishing." They go on to say, "New regulations since the financial crisis, including the Volcker Rule in the U.S., and Basel III in Europe, appear to be the causes." And last week The Wall Street Journal reported that the Bank for International Settlements warned that the bond market is becoming increasingly fragmented and fragile. Trading inventories of corporate bonds and other less liquid assets have fallen. This is partly a reaction to regulation.

Do you agree that the Volcker Rule is a contributing factor, yes or no? And then I will give you a moment to provide context.

Ms. WHITE. That can't be answered at this stage.

Chairman HENSARLING. This has been around for a while. At what stage might it be answered? And what do you say to the weight of evidence that was just presented?

Ms. WHITE. I think there is no question that there are concerns about the liquidity in the fixed income markets. No question about that. No question about there being concerns on behalf of regulators, including the SEC, of whatever may be causing that, and then what to do if in fact there is an impact, for example, if interest rates rise.

As you note, Chairman Hensarling, we do participate with the Fed, the OCC, and the FDIC in providing reports to your committee.

Chairman HENSARLING. So you agree the phenomena is taking place, but as of today you have not found a corporate culprit. Is that a correct assessment? Is that a fair assessment of your view?

Ms. WHITE. I think what we have not identified is the phenomena differs in different stratas of the fixed income markets. And I think there is no cause that can be pointed to at this point.

Chairman HENSARLING. My time has expired, but Chair White, I would certainly encourage you, as I know you have, to speak to the market participants, because an incredible number cite the Volcker Rule and Basel III as the root cause here. And I hope at some point you and other members of FSOC will conduct an analysis to see what systemic risk could be posed by this incredible diminution of liquidity in our bond markets.

The Chair now recognizes the ranking member.

Ms. WHITE. Mr. Chairman, if I may just say, one of the things we do at the SEC, particularly our staff in Investment Management, but also in Trading and Markets, is we certainly are talking all the time to market participants. I just wanted to add that.

Chairman HENSARLING. The Chair now recognizes the ranking member.

Ms. WATERS. Thank you very much, Mr. Chairman.

I want to talk about investment adviser exams. As you are likely aware, I have long been concerned that the SEC is only able to examine investment advisers, on average, once every 10 years. Last Congress a bipartisan group of Members, including former Chairman Bachus, sponsored legislation to authorize the SEC to impose a user fee on investment advisers to increase the frequency of examinations. You and your predecessor both supported this approach, as well as the SEC's Investor Advisory Committee, the SEC's Investor Advocate, the State securities regulators, and the industry itself through the Investment Adviser Association. Nevertheless, our committee did not even consider this issue in a hearing.

In your testimony, you note that you are considering the use of third party exams as a means of supplementing SEC examinations. When the committee last considered the use of third party exams, such as through FINRA, the Boston Consulting Group concluded that the cost would be twice as expensive as imposing a user fee.

Do you think that third party exams will be more expensive than if the SEC were to impose a fee?

Ms. WHITE. It is hard to judge that on sort of this side of doing it if we do proceed in that direction. I certainly share, and I have testified about it many times, the concern that I have about the gap in our examination coverage because of the lack of resources. That has been the situation at the SEC for a number of years, tens of years. And I think certainly the method, whether it is a user fee bill or some other method that would get us the funding to be able to close that gap, which I think is important to close.

We are smarter about our use of resources, we have reallocated some. This past year we had I think a 20 percent increase in the number of investor adviser exams that we did, but still we have the 10 percent coverage and 30 percent assets under management coverage.

And so as the head of the agency I look at what I think we need to be doing for investors and to fulfill our duties at the SEC, and then look again, as the Commission has in the past, in 2003 and again in 2009, at the possibility of third party exams to supplement, complement our OCIE examiners. It is not an optimal place to go, but I think we really do need to complement our ability to cover those investment advisers. That is very important, particularly to retail investors, but really to the entire marketplace.

It has had lots of issues with respect to figuring that out. Who should do it? What is the expertise? What are the criteria? What are the costs? Does it apply to all investment advisers? On what subjects? But I do think the time is now to act.

Ms. WATERS. How would the SEC mitigate conflicts of interest that may arise from such third party exams?

Ms. WHITE. Clearly, that is one of the issues that has to be addressed and resolved optimally. You have that issue that is very present in any schema like that, and so you have to apply criteria, as well as disclosure requirements.

Ms. WATERS. How much would it cost the SEC to oversee and examine these third party entities?

Ms. WHITE. Again, that can't be judged in a vacuum, but it is certainly something our economists will be studying.

Ms. WATERS. So would you repeat one more time what percentage of the industry you are able to oversee and how many years on average is it that you can actually do these examinations?

Ms. WHITE. It is a 10 percent coverage rate per year.

Ms. WATERS. Only 10 percent?

Ms. WHITE. Ten percent, and that is 30 percent of the assets under management. We obviously try to select where we go smartly, and we have gotten a lot better at that. And as I say, this past year we actually had a 20 percent uptick in the number of exams that we did, but it is still a 10 percent coverage, 30 percent assets under management coverage.

Ms. WATERS. What is the danger that we are causing our constituents and investors with such little oversight and examination?

Ms. WHITE. As an enforcement/compliance person for most of my career, I think you can't overstate the importance of what we call "boots on the ground." If you are not present in a space, anything can be occurring in that space.

We do, by the way, supplement what we do with boots on the ground by a lot more data analysis, what are called desk reviews of information that we receive. That is good, but it is not a substitute.

Ms. WATERS. Thank you.

Recently the SEC's approach to waivers from automatic disqualifications triggered by enforcement actions has drawn some criticism, especially in cases involving the largest financial institutions where waivers have been granted by SEC, mostly staff we believe, on a seemingly reflexive basis.

According to one study of well-known seasoned issuer and Regulations A and D waivers between July 2003 and December 2014, large financial firms received 82 percent of waivers, the vast majority. And as you know, today I released a draft bill that would address this problem by requiring the SEC to implement a more rigorous and more public process for granting waivers.

In your opinion, what additional steps could the SEC take to engage the public, as the Department of Labor has done, in its waiver process by seeking notice and comment on waiver applications and providing the opportunity for a public hearing?

Ms. WHITE. Let me just say I think my bottom line is, and I actually talked about this at some length about 10 days ago outside the context of a specific case, is to try to bring more transparency and clarity to what I think really is a very robust process.

And in terms of the Commission or the staff, some of the types of disqualifications and waiver decisions are made directly by the Commission. Some have been delegated by the Commission to the staff to make, but are always subject to the Commission, one Commissioner even, calling them up for Commission consideration.

It is an issue we are quite focused on across the Commission. So I think it is a robust process. We continue to examine it. We continue to also—okay. I will have to finish my answer, I guess, in a QFR.

I do look forward, Ranking Member Waters, to a further conversation on this with you, as I indicated last week when we spoke on the phone.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from New Jersey, Mr. Garrett, chairman of our Capital Markets Subcommittee.

Mr. GARRETT. Again, thanks, Mr. Chairman.

Chair White, I am going to run through several questions, so please answer as many as you can in 5 minutes.

I am going to start where the chairman left off or started with the questions on the FSB. I am still trying to grasp how that all actually works in reality. First of all, do you personally attend those FSB meetings or do you send somebody else?

Ms. WHITE. I attend the Steering Committee meetings. I think I have attended every one since I have been Chair. The steering committee of the FSB is kind of the highest level of the—

Mr. GARRETT. You attend all those?

Ms. WHITE. I attend all those. And the staff, by and large, attends what is called the plenary. They are on various standing committees and workstreams. The staff covers those, in close contact with me as well as the other Commissioners.

Mr. GARRETT. And if the FSB comes up with something that you fundamentally disagree with, that is bad for our markets or the country in general, do you feel free to push back on that?

Ms. WHITE. Yes, I do feel free to push back.

Mr. GARRETT. And if they come up with a position that is—I will use the word "antithetical"—not good for the United States, is that binding on you as far as your decision on FSOC? Has there ever been a case where they made a decision and you felt that way, and you pushed back? Have you pushed back at all? There are three questions, I guess.

Ms. WHITE. I am not a quiet person, so I certainly have spoken up on various issues. But I think it is important, and this is very important to me as carrying out my responsibilities and, frankly, the agency's responsibilities at FSB, that it is not binding. Even a report that we won't object to, to have it released publicly that has various—

Mr. GARRETT. You said something along that line that we never got from Secretary Lew at all, and we have asked him 100 times. You said they specifically asked you whether you want to object or not, I think were your words. So they present it to you that way?

Ms. WHITE. I don't know that it is explicitly put that way, but when it is a final report it goes through the full Commission for our objection or non-objection to its being published.

Mr. GARRETT. Right.

Ms. WHITE. But what is in it, and certainly in my view and given the nature of the FSB organization, is not binding substantively on the Commission.

Mr. GARRETT. Right. He says it is a consensus-driven organization, but he could never give an example of when he has ever objected to it. Have you ever objected to the publishing of their decisions?

Ms. WHITE. The Commission has, I think, raised an objection on one or two of the reports, yes.

Mr. GARRETT. Okay.

Ms. WHITE. I think the objections were based on, frankly, not enough time for the Commissioners to consider the particular report rather than substance.

Mr. GARRETT. Now, the Chair was also getting into the issue of the cumulative effect of Volcker and other rules. That was the one example where Secretary Lew actually gave us a direct answer of yes or no. He was aware that there was a problem in the corporate bond market back in October, as you were, of course.

We asked him whether or not he or the FSOC has done any analysis of all the rules and their impact upon the market. His answer was, "No, but we could add up the cost if we wanted to."

Have you ever done a cumulative study of the effect of Volcker and the other rules on the corporate bond market or in general?

Ms. WHITE. Not in those terms, I think. Our economists are working on various studies. Obviously if the issue is relevant to a rulemaking we are engaged in, we are going to be engaging in that kind of analysis.

Mr. GARRETT. Right. And so you are more narrow, you might say, than the entirety of FSOC as far as your view on things. That is fair. So would you as a member of FSOC encourage FSOC to be doing what we were asking them to do, a thorough analysis of the cumulative effect both of Volcker and of their regulatory impact on the market?

Ms. WHITE. I think that is an important analysis to do.

Mr. GARRETT. But it hasn't been done, right?

Ms. WHITE. I think those issues are being looked at all of the time, but in the way you are articulating it, I don't think it has generated a report on that. I don't mean to be mysterious about it; I just think there are a lot of different workstreams going on.

Mr. GARRETT. I was sort of taken aback when he said that each agency is doing their own little thing, but if you guys want to do your own adding up of the numbers, we can do it. And I thought, well, gee, I thought that is what FSOC was all about, that you guys would be able to see across the entire horizon and would be requesting that. Will you request that FSOC do that?

Ms. WHITE. I will certainly consider doing that because I do think that all of those impacts ought to be being considered. I don't think it is for somebody to add them up.

Mr. GARRETT. Yes. And here is a quick question just offline, and that is, the Chair asked back in March, the middle of March, for follow-up responses to a letter from February concerning release of information with regard to an investigation by members of FOMC as far as insider trading and what have you, and I don't believe the committee has gotten any response to that letter from either March 13th or February 5th. I know you may not see all the letters, but are you aware of those letters? Can we get a timely response?

Ms. WHITE. I am not aware of those letters in particular, but I will certainly look into it and give you a response.

Mr. GARRETT. That would be great. Thanks a lot.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from New York, Mrs. Maloney, ranking member of our Capital Markets Subcommittee.

Mrs. MALONEY. Thank you.

Chair White, last December you gave a much publicized speech in New York where you outlined a sweeping plan to update the regulatory regime for asset managers. And at the time you directed the staff of the SEC to come back with recommendations in three key areas: first, more data reporting requirements; second, enhanced risk management rules; and third, resolution plans for winding down asset managers.

My question is, where do these initiatives stand? Has the staff come back with concrete recommendations? Have these recommendations been shared with Commissioners? Exactly where does it stand?

Ms. WHITE. Before I announce those initiatives, there was a great deal of discussion with my fellow Commissioners and the staff about what made sense for today's markets and the risks in them.

In terms of those particular initiatives, they are all very actively in process. I think the data reporting initiative is probably further along formally to some degree. But all of those, I hope, will be acted upon this year.

Mrs. MALONEY. Do you have a timeline of when we might see some concrete results? Would you release the data first, since that is further along, and then the others? What is the timeframe for it?

Ms. WHITE. I think what you will see is, as they are ready and voted upon, they will be done in sequence of when they are ready, and I think you will see those beginning to come out in probably the third quarter of this year.

Mrs. MALONEY. Okay. Thank you.

Following up on the asset management issue, in your December speech outlining the three asset management initiatives you said, and I quote, "We must take steps to enhance assessment managers' risk management programs, particularly their liquidity management." But in your written testimony today, on page 12, you said that the SEC staff is "considering whether enhanced risk management programs should be required" for assessment managers.

Does this reflect a change of view, a change of focus? Do you think it is possible that enhanced risk management programs might not be required for asset managers?

Ms. WHITE. I think the language does not mean that really in the same place. The staff is working on such recommendations until those are actually presented and voted upon. Obviously they are not implemented at that point in time, but the wording difference does not suggest that.

Mrs. MALONEY. So are you committed to developing enhanced standards for liquidity risk?

Ms. WHITE. Yes. We do think that is a need and that is what the staff is working on. Again, until the Commission actually votes on the rules, they haven't been implemented. But, again, yes, we are firmly committed. I am firmly committed to that.

Mrs. MALONEY. And have you already started sharing this information with—

Ms. WHITE. The staff has briefed the Commissioners on all of these initiatives. The next phases become proposals for rulemakings.

Mrs. MALONEY. One of the main concerns of the businesses and financial institutions that I represent is cybersecurity concerns, and there have been some pretty high-profile attacks on companies like Target and Home Depot, but there have been many quiet attacks on financial institutions. What is the SEC's role in addressing or combating cybersecurity?

Ms. WHITE. Again, I think there could not be a higher priority for all of us, private sector, government sector, than to address these clearly long-term, very serious risks to our economy and really our Nation.

The SEC's specific responsibilities in cyberspace relate to our registrants in terms of their own systems and making them resilient, and then if there is an incident, reporting them. Obviously, they report them publicly if they are material.

The SCI rule that we adopted in November, which is a very important rulemaking to enhance the resiliency of the systems of our critical market infrastructures, to some degree deals with the cyber subset of that as well. We also participate in a number of other government bodies where we all try to get together to make sure that we are coordinated. FBIIC, that the Treasury chairs, is one of those groups.

We held a roundtable in March with government people and non-government people, really to bring everybody together in the same space to make sure it wasn't like, you are doing this, and you are doing that, and then things are falling between the cracks.

Mrs. MALONEY. I would like more follow-up in writing because this is, I would say, a concern on both the Republican and Democratic sides.

And lastly, what are the minimum actions that a public company should take to prevent a cyber attack?

Ms. WHITE. That is a big question. It depends on the company to some degree. But we have done, with respect to our registrants, one of the things we have also done is with our OCIE examiners, we have done a cyber risk initiative and looked at investment advisers and broker-dealers in terms of their preparedness. It varies by institution. There are certainly some common things that make sense to do. I could follow up on that as well.

Mrs. MALONEY. Thank you very much. My time has expired.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Texas, Mr. Neugebauer, chairman of our Financial Institutions Subcommittee.

Mr. NEUGEBAUER. Thank you, Mr. Chairman.

Chair White, a recent March 8th Financial Times report indicates that you have about 100 SEC staffers who watch over the U.S. equity market. But monitoring the debt market is a little bit different. We have municipal debt—for a $3.7 trillion market, you have 6 people overseeing that. And in corporate bonds, the size of which, I think that market has grown 42 percent to $7.7 trillion, you have one employee who devotes his time to that.

But when we look at your budget and what most of your increases that you call for are for enforcement examination, I think we all want to make sure that you have a strong, vigorous enforcement function at the SEC, but it kind of troubles me that you have so few people looking at a fairly large portion of our markets.

First of all, why do you need so many more people for enforcement, basically for some of the rules from Dodd-Frank that haven't even been written yet, but yet you have allocated such a small allocation to these other markets?

Ms. WHITE. I have several responses to that. First, I think we always have to keep our enforcement function very strong. That was true before Dodd-Frank, and it is true after Dodd-Frank.

But I will say that one of the things that I did when I first came to the agency was sort of look at the staffing, particularly, frankly, in Trading and Markets, where they are shouldering very heavy rulemaking burdens, Volcker, for one, and Title VII derivatives for another. They oversee the markets, equity and fixed income. They are responsible for broker-dealer financial responsibility. And to really zero in on what more staffing or restructuring of the staffing makes sense to do, I have continuing dialogues with Steve Luparello, who is our Director of Trading and Markets, on that.

On the fixed income point, per se, it isn't really organized in a way, and at least to this point Mr. Luparello thinks it is organized as it should be, in a dedicated, kind of stand-alone unit. But there are a number of people in Trading and Markets who are attending to the market, structural issues to the extent I have talked about some of those that we are working on to try to enhance that structure, increase the transparency, and also just the various issues that occur in those markets, whether it is with respect to broker-dealer or it is with respect to actually the trading practice rules. I could follow up on that if—

Mr. NEUGEBAUER. Those markets have grown exponentially, but as I look back, I don't see any SEC request over the years to beef up staffing in that area to keep up with a fairly substantial part of the market because the fixed income market has grown exponentially in the last few years.

Ms. WHITE. There is no question that it has grown exponentially. There is no question about its importance. I think it has also not gotten the attention over the years that the equity markets have. I think we are giving it that attention.

In terms of the staffing, the budget requests do not come through as requests for dedicated positions because of how that is structured, as I mentioned. I could explain that in more detail as a follow-up.

Mr. NEUGEBAUER. I also want to follow up on something my other colleagues have mentioned as well, which is that I think there is a growing concern about the liquidity in the fixed income market. For example, I think some other articles have been quoted, but in today's Wall Street Journal, it indicates that an 84 percent increase since June 30th means that about $640 billion, or 1 in 5 dollars in bank security portfolios, now can't be sold because they are moving them from bonds that are for sale to bonds that are being held to maturity.

And what we hear over and over again is that there is beginning to be or already is a liquidity problem. And so then the question with the Federal Reserve thinking about changing their interest rate policy and as they start to increase the interest rates, the question is, has anybody done an analysis of—again, pointing back—do you even have the staff to have people do an analysis of what the consequences would be if we begin to have higher interest rates and a lack of liquidity in the fixed income market?

Ms. WHITE. We for some time have been talking to market participants, talking to dealers. We put out guidance, I think last January, in terms of risk management of the potential risks that could flow, the liquidity risks that could flow from a rise in the interest rates. And other regulators are doing the same there.

I think there was also a piece perhaps today in the Financial Times on the same subject as well, kind of different views in the marketplace as to what is likely to happen from our point of view as the regulators.

We want to make sure everybody under our jurisdiction is acutely focused on those possibilities at least. And we really did come out, as I say, in January with well-received guidance on risk management for those particular kinds of risks, but don't understate the issue by any means.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from New York, Ms. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chair White, it has been about a year and a half since the SEC first proposed rule for equity crowdfunding. From hearings we have conducted in the Small Business Committee, I know many firms are eager to begin using this new type of capital formation. Yet we have also heard the rules could make the process prohibitly expensive. When can we expect the final rules to be published, and how will you address the high cost for small businesses?

Ms. WHITE. The crowdfunding rules, and I have spoken about them before and had hoped to complete them actually last year, are a very high priority to complete for 2015. What we knew would be a very complex rulemaking has been even more complex to do to both carry out the statutory requirements and to make it workable and not cost-prohibitive.

I actually coincidentally had a rather detailed meeting yesterday with the staff about this. It is advancing, but there are a number of issues that we are trying to solve optimally given both the statutory requirements, the costs, and making sure this works. Clearly there is a lot of excitement in that space.

Ms. VELAZQUEZ. Do you anticipate a wave of new businesses jumping into the crowdfunding market?

Ms. WHITE. It is hard to predict that. You certainly have the excitement and the interest out there. The Reg A-Plus rulemaking we mentioned before is another expanded means of raising capital for smaller companies. There is certainly a lot of excitement out there, but I think it is one that is hard to predict until it is up and running and we see how workable and how costly it may be.

Ms. VELAZQUEZ. Thank you.

Chair White, you indicated that strengthening the SEC's enforcement function will be one of your top priorities and will review policies like neither admit nor deny in settlements. Have you completed that review and were changes made?

Ms. WHITE. Yes, shortly after I arrived at the Commission, and I did it in consultation with my fellow Commissioners as well as the Director of Enforcement and his supervisors. I think it was in June of 2013 we instituted a new policy to require admissions in certain kinds of cases, not permit a no admit, no deny settlement in a certain swath of cases where I thought, we thought, that public accountability was particularly important.

We have set out some criteria for which cases that we sort of focus on for possible admissions. I think we have done approximately 20 cases in that vein. We still do the no admit, no deny for the bulk of cases, and like other civil law enforcement agencies do, you want to be able to do that because it is efficient, you don't have litigation risks, and you get money back to investors faster. But I do expect the cases where we require admissions to evolve and grow over time.

Ms. VELAZQUEZ. And how do you expect such changes to impact the behavior of Wall Street firms?

Ms. WHITE. Again, it is one of the hardest issues to measure in law enforcement. I do think that having public accountability is an important element of deterrence, and I think that is why I made the change.

Ms. VELAZQUEZ. Okay.

Chair White, the Volcker Rule provided the financial industry with many exemptions, including on certain collateralized loan obligations. However, some in the industry are asking for broader relief, arguing the current rule will restrict access to capital for small businesses. I just would like to hear from you what type of business loans are packaged in CLOs.

Ms. WHITE. That can vary. As you know, the compliance date for those sets of issues the Fed has postponed to give businesses a longer period of time in order to adjust to the requirements when they apply. We know there are other issues that are still out there. But that is the state of play at this point.

Ms. VELAZQUEZ. With the Nation's largest banks holding over 95 percent of CLOs, is there any real risk to small business lending under this rule?

Ms. WHITE. It is hard to say there is no risk. I will say this. I think the regulators are very cognizant of those issues and that possible risk.

Ms. VELAZQUEZ. However, we know that the largest share of small business loans are made by community banks, not the largest banks, and the data is there, the numbers are there. So that argument that it will impact small businesses, to me doesn't hold water.

Thank you.

Chairman HENSARLING. The gentlelady yields back.

The Chair now recognizes the gentleman from Missouri, Mr. Luetkemeyer, chairman of our Housing and Insurance Subcommittee.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

Chair White, thanks for being here today. I just want to go down a little different road and talk a little bit about your job as a member, a voting member of FSOC. And as I Chair the insurance part of our responsibilities here in this Financial Services Committee, we have three insurance companies designated as SIFIs. Can you give me the reason that you support or that you came up with or you believe that they were designated as SIFIs? What are the criteria or standards on which you based that decision?

Ms. WHITE. As to those that I participated in, I was actually recused from one or two of them, I think. I was not recused in the MetLife matter. That, as you know, is a matter of litigation, but the FSOC put out the basis for that decision. It was made on what is called the first determination standard, which is basically material financial distress of this particular entity, if it occurred, and you assume under the statutes requirements—

Mr. LUETKEMEYER. There is no list of criteria. You just look at the entity and see once there is an analysis whether—

Ms. WHITE. No, there are also statutory factors that you consider. There are 10 statutory factors that FSOC considers under its interpretive guidance—actually, this was all done before I arrived as Chair, but it is existent still—these factors are considered in a framework of six categories. You look at size, interconnectedness, substitutability, leverage, liquidity. There are a number of factors that you look at before—

Mr. LUETKEMEYER. Chair White, do you realize I have asked that question of Chair Yellen, Director Cordray, and Secretary Lew, and you are the first one who actually answered the question? Congratulations.

Ms. WHITE. Well, it is a flaw, I guess, in my answer. I don't know. But I am going to keep it. I think I will keep that flaw.

Mr. LUETKEMEYER. Wonderful. But thank you for that.

Ms. WHITE. But it is laid out, seriously, it is laid out in the public—

Mr. LUETKEMEYER. Okay. Nobody else would actually give me that as an answer, but thank you for that.

I assume, because it is laid out, apparently you have seen it someplace, there is a way to de-designate yourself, then, I take it, is that correct?

Ms. WHITE. There is a yearly review, if you seek it, that could result in that.

Mr. LUETKEMEYER. Wow. It is amazing. The three other ones couldn't even answer that question. Fantastic. Wow, we have made some progress this morning. This is almost earthshaking. But I will stop before I get too far ahead here.

With regard to that, because of FSOC, they also designate bank SIFIs as well. And I know that I have asked this question of some other folks as well. Do you believe that we need to have some regulatory relief with regard to a threshold or a set of criteria as well that is designated to allow the banks who are not systemically important to not have to fall under this overzealous regulatory regime?

Ms. WHITE. There is certainly a lot of focus on that. Without any question, I think that, frankly, kind of across our spaces the impact on whether it is community banks or other small businesses.

Mr. LUETKEMEYER. The interesting part of this is one of the authors of the Dodd-Frank bill was sitting in front of us last summer, Mr. Frank, and he indicated it was never his intention or the intention of Congress to draw into their net of regulatory oversight all of the mid-size banks, the community banks, the credit unions, with regard to the SIFI situation, or insurance companies, for that matter, and yet we are going down that road.

I guess my question is, would you support legislation, then, to rein in this apparent overzealousness of the Administration or anybody who is looking at this?

Ms. WHITE. I really can't comment on specific legislation. I do think it presents a set of issues that is very important to consider and appropriately address. I don't mean to be hedging on that, but I can't—

Mr. LUETKEMEYER. Well, doggone, we were doing so well here, because not only did Mr. Frank support that position, Mr. Lew supported that position, and Chair Yellen supported that position. So I am sure that if you think about it just a little bit more, I am sure, Ms. White, you would support that position as well, would you not?

Ms. WHITE. I don't know. I was off on the other questions. But, seriously, it is clearly an important issue to address correctly, and I really can't comment beyond that at this point.

Mr. LUETKEMEYER. Okay. Very quickly, I just have a couple—I know some other folks want to talk to you about the fiduciary rule, and it is interesting that in your statement here you say that a significant study and consideration was done of the fiduciary standard.

If you did the study, can you tell us what problem you found in the study that you need to go ahead and issue a fiduciary rule?

Ms. WHITE. I think the reference in the testimony to study is I have been studying all the data that is there and the studies that have been done.

Mr. LUETKEMEYER. Okay. Did you find a problem?

Ms. WHITE. I have. And this, by the way, is something that I, from before I was confirmed, was very concerned about because, as I said at I think my confirmation hearing, and certainly thereafter, any time you regulate essentially identical conduct differently, particularly in the space where retail investors may be harmed, you have to think very long and hard about that. And the SEC staff did a study with recommendations, I think in 2011.

Mr. LUETKEMEYER. This is a side comment, just I appreciate that also because the DOL is wanting to get into the space. Please don't cede your position to them. You should be the regulator of this, not them.

Ms. WHITE. We are separate agencies, and so I think each has to decide—

Mr. LUETKEMEYER. Yes, but don't let them overtake or regulate in your space. That is my comment.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Green, ranking member of our Oversight and Investigations Subcommittee.

Mr. GREEN. Thank you, Mr. Chairman.

I thank the ranking member as well.

And thank you, Madam Chair, for appearing today. I would like to visit with you very briefly about proxy access. As you know, the proxy is something that many shareholders, major shareholders, seek to have an opportunity to impact. The proxy would give shareholders an opportunity to nominate candidates. And I am concerned and interested, if you will, in where we are with proxy access currently.

Ms. WHITE. As you know, there was a rulemaking overturned by the D.C. Circuit. But what wasn't overturned by the D.C. Circuit was our Rule 14a-8, which permits shareholder proposals to be sought to be put on the ballot. And this season, we have had a great many of those. I think almost 100 actually have been submitted. So you have a lot of private ordering that is going on with respect to proxy access. There has been a fair amount of attention on it in this particular season I think because of a no-action ruling that the staff made. And then I directed them to review the issue more broadly. And we are not actually issuing decisions on that particular exclusion in this proxy season.

But there has been a lot of what I call private ordering movement in the proxy access space. And we are very closely following that. There is not a mandatory rule. But there is a lot of private ordering going on.

Mr. GREEN. Will you be moving forward to produce a rule that will cover these issues in the near future?

Ms. WHITE. I don't have any current intention to do that. As I say, there has been a lot of activity in the space that we are monitoring very carefully. A number of proposals have actually succeeded, whether by ballot or by way of negotiation with companies. So, before we would make any decision, we are watching that very closely and analyzing it.

Mr. GREEN. Thank you. Let's move now to your real, your most meaningful, I suppose, responsibilities. You are, as it is often said, the cop on the beat. And currently you oversee 11,500 investment advisers; 9,000 public companies; and over 800 investment company complexes managing over 10,000 mutual funds. You manage about 4,400 broker-dealers, 450 transfer agents, 18 national security exchanges, 87 alternative trading systems, and 10 registered clearing agencies. That is a lot of responsibility. With all of that responsibility, you do need the cooperation of Congress. And you have so much as indicated today that you appreciate the support from this committee. What is it that you would like the committee to do to further support these efforts to maintain your position as a cop on the beat that is effective?

Ms. WHITE. I think, again, the issue that most concerns me is having the adequate resources to be that very strong cop on the beat. It is not the cop on the beat, it is the compliance examiner on the beat that is also so important to keeping that bar of compliance where it should be to protect investors and the markets. I have spoken earlier in response to other questions about the need, I feel, the compelling need to meet that gap in coverage at the examination level. But clearly that carries through to our enforcement function as well.

Mr. GREEN. You have indicated, I believe, by way of the Administration that you are in need of $222 million as an increase for Fiscal Year 2015. How crucial is that $222 million?

Ms. WHITE. It is critical to us. I spent a lot of time on reviewing this budget request for exactly where I think we need resources and could use those funds wisely in terms of being able to hire who we need to to meet our duties. And I appreciate the support we have gotten. We are in a position where we really need significant additional resources. We have tried to be very surgical about what we have asked for.

Mr. GREEN. Let me thank you for your service. I know that you have a very tough job. But I do think that you are going about it in an appropriate manner. Thank you.

And I yield back.

Chairman HENSARLING. The gentleman yields back.

All Members are reminded that we request you to silence your electronic devices. And somebody please share with Mr. Cleaver he may have a message.

Mr. GREEN. Thank you for exonerating me, Mr. Chairman.

Chairman HENSARLING. The gentleman from Texas, Mr. Green, was not the offending party.

The Chair now recognizes the gentleman from Michigan, Mr. Huizenga, chairman of our Monetary Policy and Trade Subcommittee.

Mr. HUIZENGA. Thank you. Chair White, I want to quickly hit on three things: mergers and acquisitions; conflict minerals; and pay-ratio rule. I am tempted to lead off with something else that I saw crawling across one of the cable news shows this morning about the markets being rigged, question mark. I think it had to do with the release of a certain book in paperback today. But we will leave that for—

Ms. WHITE. These are timed by my hearings too.

Mr. HUIZENGA. Yes. I wouldn't doubt it actually. So, quickly, mergers and acquisitions, last Congress I had a bill, H.R. 2274, that passed this committee and the body unanimously. Two weeks after it passed the House, the SEC Division of Trading and Markets staff issued a no-action letter addressed to six mergers and acquisitions lawyers dated January 31, 2014, providing M&A brokers with relief from the broker-dealer registration under the circumstances, similar as to what we had described in my legislation. There was a Senate bill as well. But, in effect, the SEC and my legislation had clarified some of that exemption.

Unfortunately, the Senate did not take up either my bill or the Senate companion, S. 1923. I have reintroduced the bill as H.R. 686. So we are on the same page with that. I appreciate that. I do have a question, though. Does an SEC staff no-action letter giving relief from broker-dealer registration reflect the staff's judgment that covered activities do not warrant direct SEC oversight?

Ms. WHITE. I am not sure it is literally phrased that broadly. What it certainly means is—

Mr. HUIZENGA. In essence?

Ms. WHITE. I would say substantially, yes.

Mr. HUIZENGA. Okay. And part of that, there was no size limit of the privately owned businesses for which the no-action relief is available, is my understanding.

Ms. WHITE. I would have to confirm that.

Mr. HUIZENGA. That is my understanding. Would the absence of a size limitation reflect the staff's judgment that business size is not particularly of concern to SEC?

Ms. WHITE. I couldn't go that far without actually looking into it specifically, which I didn't do before I came here today. But I am happy to get back to you on that.

Mr. HUIZENGA. Is a staff no-action position typically reflective of the SEC's regulatory priorities and allocation of the resources and other regulated activities? In other words, if you are saying, hey, no-action letter, this is something we don't particularly want to deal with.

Ms. WHITE. It can mean different things. Obviously, there are no-action letters that are given kind of across our spaces. So it could be different things.

Mr. HUIZENGA. Is a no-action letter legally binding on the Commission or the Commission views? Is that how the Commission views no-action?

Ms. WHITE. It is not legally binding.

Mr. HUIZENGA. Not legally binding?

Ms. WHITE. No.

Mr. HUIZENGA. Hence why I believe we need to pass H.R. 686. It looks like we are on the same page. And it makes sense to me that we need to fix this statutorily. So, quickly, if you have anything you would like to add on that?

Ms. WHITE. No. I may supplement in getting back to you on that.

Mr. HUIZENGA. I do intend to follow up with some written questions as well.

And then, really quickly, conflict minerals: In October of 2013, you had a speech basically saying that this was not necessarily the territory that the SEC needs to be flying into, not that there aren't issues with that, but the SEC is not really set up to deal with these, crafting trade sanctions and articulating and enforcing human rights policies.

A letter that myself, Chairman Hensarling, Chairman Garrett, and Chairman Royce sent you, you responded to very quickly, and we appreciate that. But you laid out that there have been approximately 21,000 hours of staff time that has been put into this, about $2.7 million of some precious few dollars that you have in an area where you don't have an expertise. So the D.C. Court of Appeals comes and vacates part of the rule and, for some reason, the SEC has decided to appeal that. Explain that.

Ms. WHITE. First, I have to begin with it is a congressional mandate. And my view on congressional mandates is, it is my obligation to carry them out in the most cost-effective way we can, despite the numbers that you just quoted. It was actually a rule that was adopted before I arrived. The D.C. Court's decision came out largely validating the rule. The vast majority kind of went out of their way to say they were validating it. So we proceeded with enforcement on that. The one issue that they did not was on the naming part of what you can conclude in terms of whether you had conflict-free minerals.

Mr. HUIZENGA. That is the shaming element.

Ms. WHITE. It has been referred to as that. As a First Amendment issue, at the time of that ruling, there was an en banc decision in another case, totally separate—I think it was a DOJ case actually—on the same issues. And so we sought a re-hearing in defense of the rule that was mandated by Congress.

Mr. HUIZENGA. Priorities as well, though. And I appreciate that.

And I will follow up on the pay ratio. I have that same concern that the shaming element may be violating the First Amendment.

Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Missouri, the anxiously awaited Mr. Cleaver, ranking member of our Housing and Insurance Subcommittee.

Mr. CLEAVER. Mr. Chairman, I apologize for Ms. Moore's phone going off.

Chairman HENSARLING. The gentleman just earned himself an extra 15 seconds.

Mr. CLEAVER. Thank you, Mr. Chairman.

Madam Chair, thank you for being here. As you know, there is seemingly always, at least since I have been here, the bubbling up of interest in somehow reinstating the Glass-Steagall provisions. And, actually, some of us at least struggled to try to get it inserted into Dodd-Frank—unsuccessfully I might add—in Sections 20 and 32, which deal with the consumer protection component. But the argument has continued. And I am interested in your opinion, that some would say that the fact that we had the 2008 collapse was due in no small part to the failure to separate commercial banking from investment banking. And, by the way, as you probably know, there are bills pending now. There are bills that have been introduced.

Ms. WHITE. I think on that issue, that is a legislative judgment. It really is a legislative judgment to make. Clearly all the regulators since the crisis have been very focused on reforming the existing system with the tools that we have been given to use. And I think they have been used quite effectively in most cases and quite vigorously. But I think that judgment really is for the Congress.

Mr. CLEAVER. So the SEC obviously wouldn't have a position; it is a legislative issue as you said. But I am wondering, does it—I will ask it another way; I think I can predict your answer—but would the SEC find it easier to do its job if we had a separation between commercial and investment banking?

Ms. WHITE. It might depend on what else went with that, I suppose. I don't think I can really comment on that. I would like to see the precise parameters of it. I think all of our jobs are difficult and challenging. But I think, under any regime, they are.

Mr. CLEAVER. Thank you. And I appreciate your answer. I had hoped but didn't think I would get an answer. In October of 2013, you elaborated on your approach in the SEC in terms of the enforcement program. You stated at the time that investors do not want someone who ignores minor violations and waits for the big ones that bring media attention. So, as a result of that, you announced that the SEC would be taking a broken windows approach—I am assuming taking that from the book that Mayor Giuliani wrote during the 1990s. However, in the securities law context, other scholars have criticized that such an approach inappropriately diverts Commission resources away from major fraud and towards small-time offenses. Do you agree?

Ms. WHITE. I don't agree. And I also think there has been a fair amount of misunderstanding from that speech as to what the program is. The broken windows comments was meant to be an analogy. I do think it is important not to neglect smaller offenses that affect our small retail investors, for example. I also think it is important—and this was really kind of the core of what I was saying—to raise the bar of compliance. So if you have important rules out there, they are not necessarily directed at fraudulent conduct, but the rule is meant to protect the markets and investors. If there is massive noncompliance, you might as well not have those rules unless you enforce them. So what we have done—and it is really a very small part of our program—is to target some of those areas very efficiently and send a very strong message that these rules are meant to be followed and they are important to follow. In my judgment, we have not diverted any resources from the Ponzi schemes, or the accounting fraud cases, which we have also emphasized. I think it is a piece of our program.

Mr. CLEAVER. I don't think we will have time for my other follow-up question.

So thank you very much for being here. I appreciate it.

I yield back, Mr. Chairman.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from Wisconsin, Mr. Duffy, chairman of our Oversight and Investigations Subcommittee.

Mr. DUFFY. Chair White, welcome.

Quickly, I want to ask you about the Tick Size bill. You can only imagine; we bring it up every time we meet. This committee passed that without objection. It passed on the House Floor with only four dissenting votes. I know you have been working on it. I am wondering if you can give us an update as to where you are with regard to, are we on our way to a final rule or what other steps may come before that?

Ms. WHITE. Yes. The comment period on the Tick Size pilot has closed. I think, sometime in February, the staff, by virtue of its delegated authority, has given the Commission I think until May 6th to act. I think I heard Mr. Luparello testify at a subcommittee hearing that that is the date. The reason I think for exercising that delegated authority was because we have gotten a lot of comments in that are really—we want to make sure we get this right. It is a very important undertaking, I think, for the small cap companies.

Mr. DUFFY. I appreciate that. So we take a final rule on May 6th?

Ms. WHITE. That is our date to act. And I think we will keep to that.

Mr. DUFFY. Okay. I would just put one last plug in, do you think you can get good data in a short period of time? I think the pilot program that you have is a year. I would just note that the pilot program that passed out of our institution was 5 years. And we want good data, but we also want good market participation. And I sent a letter to that effect. I would just reiterate that here today.

Ms. WHITE. And that is one of the significant comments that we are boring into.

Mr. DUFFY. Switching notes, still talking about capital formation, small businesses, venture exchanges, we have had a lot of conversations in the House. I know you have been somewhat supportive. Is there some form of a work stream on venture exchanges at the SEC? And, if so, could you give me an update on that?

Ms. WHITE. There is a work stream in the Trading and Markets Division. They are considering that there is no decision made in terms of whether there will be rulemaking in that space, but they are studying whether there should be rulemaking in that space in order to, obviously, increase liquidity, secondary liquidity for smaller companies. The SEC has approved venture exchanges before. So we obviously encourage those kinds of solutions and other kinds of solutions that may address those secondary liquidity issues. But there are also some legal issues with respect to some aspects of that that the Trading and Markets Division, along with our General Counsel, ultimately will let us know whether to proceed in a particular kind of way. We may need some legislative change.

Mr. DUFFY. Is the SEC aggressively working through the process of thinking through a venture exchange? Or are you saying right now you want Congress to start that action?

Ms. WHITE. We are basically very much actively in the midst of considering that and what the various issues are, what we might be able to do on our own, so to speak, with regulation, and what we might need legislation for. No ultimate decision has been made.

Mr. DUFFY. Let me quickly, I believe you are dealing with Reg A tomorrow; we have crowdfunding; we are dealing with Tick Size; and we are discussing venture exchanges. Anything else you are doing in regard to capital formation for small businesses?

Ms. WHITE. We do a lot. Our disclosure effectiveness review is devoted specifically not only to that but to small business company disclosures, whether there should be further scaling in that space. I reinstituted our Small Business and Emerging Companies Committee that has been quite active in the last 9 months with recommendations and advising us on various issues. We have a dedicated unit in our Corporation Finance Division that is devoted solely to the small businesses issues.

Mr. DUFFY. We had Mr. Ceresney in last week in our Capital Markets Subcommittee. And we were asking him questions about the process used at the SEC, whether you are going with the administrative process or going into Federal courts. He indicated there was a process that you use at the SEC. We haven't seen that. If there is a process, we would like to see it. And if there isn't one, we think you should have a process published that everyone can see how you are making decisions as to whether you go before an ALJ or you go into Federal courts.

Ms. WHITE. Just briefly on that, obviously, the decision is made in each case. But it is subject to the Commission's approval where a case that is authorized is filed or a settled case may be filed. I think it is—

Mr. DUFFY. Not to interrupt you, and I apologize—

Ms. WHITE. Sure.

Mr. DUFFY. —but our concern is—I know you don't win 100 percent every year, but last year you won 100 percent of your cases, picking the forum in which you play and in front of judges that you hire and who are paid through the SEC, with the rules that you make. It gives us concern, number one. But, number two, there should be a process that we can all look at that determines how you pick the forum in which you litigate these issues.

And if I could just make one last point, we heard a lot of complaints about the discovery. When you go through the administrative process, you don't use the Federal procedure. I think it would be wonderful if you would adopt the same standards as the Federal courts in regard to discovery.

With that, I yield back.

Ms. WHITE. Just really briefly, and I will get back to you on these issues, obviously, we don't even want the appearance out there that we are being arbitrary or unfair about anything we do. I do think—and obviously these AP cases come to the Commission. That really is a fair process. It is not identical to district court. But, for example, Brady and Jencks obligations apply in the administrative proceedings. Exculpatory evidence has to be provided. Witness statements have to be provided. You don't get that in district court. But I take your points.

Mr. DUFFY. There is a perception of unfairness.

Ms. WHITE. Understood.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from Wisconsin, Ms. Moore, ranking member of our Monetary Policy and Trade Subcommittee, who looks no worse for wear for being thrown under the bus by the gentleman from Missouri.

Ms. MOORE. Thank you so very, very, very much, Mr. Chairman. We take turns throwing each other under the bus.

Chair White, thank you so much for appearing. My first question to you is regarding any final fiduciary rule that would be promulgated. The SEC has been roundly criticized for not taking the lead on pushing this. Now that DOL has advanced its first draft, others are now telling you to stand down. And you have stated that Labor and SEC have "different missions." So I was wondering if you see these different missions as being antagonistic to the goal of having a harmonized rule.

Ms. WHITE. I think, first, it is important to note that we really are at the beginning of this process. It is something we have been studying a lot, looking at the studies that are there. I have reached my own personal conclusion. But the next step is for me to be discussing in detail all the aspects of my thinking with my fellow Commissioners so that a decision is made. We are really at the beginning of that process. It is a long process. There are lots of complex issues. We are separate from the Labor Department. They have proceeded or are about to proceed—nothing has been finalized with a proposed rulemaking to OMB. And they have separate jurisdiction. They have important ERISA jurisdiction over retirement accounts. And the agencies can proceed separately and will presumably. We each have to decide what we need to do in our spaces. It doesn't mean we don't consult. We have and we will to try to avoid inconsistencies, but really separate agencies, separate jurisdictions, separate mandates.

Ms. MOORE. And so separate—is there going to be a rule that sort of harmonizes—

Ms. WHITE. My expectation is that we will soon see the publication of the Department of Labor's rule. It has been put out for notice and comment. And then they will, presumably, proceed on the basis of that. We are at the beginning of our process. So that is a separate process.

Ms. MOORE. Okay. Thank you for that. I would like to ask you a question about the municipal securities market. Although the SEC's reach within the municipal market is constrained, I understand that we have seen some renewed interest by the SEC with the MCDC enforcement program as an example. What additional steps do you think you will take to strengthen the municipal market?

Ms. WHITE. As you have indicated, we are more limited in our regulatory reach there. For example, we don't have direct, what I will call disclosure jurisdiction, over the municipal issue, which is an enormously important market. It is enormously important to retail investors who are heavily invested in that marketplace. The MCDC initiative, which is a voluntary self-reporting initiative, was very important to that marketplace. It dealt with continuing disclosure obligations. I think it has already sent a very strong message. This raised the bar in that space. We are also looking at just the structural issues in the muni area as well, working with the MSRB, whom we oversee, in terms of approving a best execution rule, for example. Also, we are looking at better disclosure on what is called riskless principal transactions. We have brought a number of enforcement actions to really hammer home the point of investor protection.

Ms. MOORE. I thank you so much. And, finally, forgive me if others have asked about the 7-percent increase in funding relative to your Fiscal Year 2015 budget for the enforcement program. Is there any particular activity that you are going to focus on with these extra resources?

Ms. WHITE. There are a number of areas, but those are really targeted to getting more market experts and litigation, trial lawyers. We have more trials now. We have to be prepared to have more trials as we now require admissions in certain cases. It may or may not lead on a permanent basis to more trials. Those are two of the areas, as well as data analytics in that space.

Ms. MOORE. Okay. Thank you so much.

I yield back my time.

Chairman HENSARLING. The gentlelady yields back.

The Chair now recognizes the gentleman from North Carolina, Mr. Pittenger.

Mr. PITTENGER. Thank you, Mr. Chairman.

Chair White, as you are aware, in July of this year banks of all sizes, including community banks, are expected to be in compliance with the Volcker Rule. My question is related to covered funds and the legacy securities. As you may be aware, members of the financial industry have put forward a limited proposal to ease the compliance burden for banks of all sizes when it comes to the ability to invest in and make markets for certain securitized products.

Basically, the proposal you should have received creates certain assumptions for legacy securitizations to determine whether they fall in or out of the covered fund definition. To me, it seems like a fairly straightforward proposal in order for the industry to comply with the Volcker regulations. Are you familiar with this proposal?

Ms. WHITE. I am aware that there is one. But I would have to get back to you on specific reactions to it.

Mr. PITTENGER. When do you think that there might be a response back to the industry that they submitted related to this Volcker compliance?

Ms. WHITE. I can't really answer that. But I can supply an answer to that question as well.

Mr. PITTENGER. Okay. It does seem to me that failure to ease these compliance burdens threatens to harm the liquidity associated with the securities. Would you agree with that?

Ms. WHITE. It certainly is a significant issue. I really can't go beyond that because, obviously, it is something before us.

Mr. PITTENGER. Sure. Chair White, do you expect that the SEC will issue a final pay-ratio rule in 2015?

Ms. WHITE. The pay-ratio rule is, as I alluded to earlier, a congressional mandate that we expect to proceed on I think in 2015.

Mr. PITTENGER. Sure. Does the SEC evaluate whether a specific regulation is tailored to impose the least burden to our society, would you agree with that, including market participants, individuals, different sized businesses and other entities?

Ms. WHITE. We certainly are very sharply focused on that. Obviously, if we have a congressional mandate that is given to us, my responsibility, our responsibility is to carry that out but in the most cost-effective way we can.

Mr. PITTENGER. Does the analysis consider the cumulative cost of regulations in evaluating whether the regulation is inconsistent with or incompatible with or duplicative of other Federal agencies?

Ms. WHITE. We certainly include that as part of the analysis whenever the data is available.

Mr. PITTENGER. Do you consider the potential regulation or investor choice, market liquidity for small companies?

Ms. WHITE. We do.

Mr. PITTENGER. I would like to talk briefly about the SEC budget request that your agency recently submitted, the $1.7 billion for Fiscal Year 2016. That is correct, you testified?

Ms. WHITE. Yes.

Mr. PITTENGER. Do you know what the SEC's current budget is?

Ms. WHITE. It is approximately $1.5 billion.

Mr. PITTENGER. Yes, ma'am. How much has it increased since 2010, about 35 percent, is that correct?

Ms. WHITE. I can't give you the precise percentage, but there have been increases.

Mr. PITTENGER. Since 2000, what would that percentage be, do you know?

Ms. WHITE. I don't know the precise percentage. I think I said a little bit earlier, trying to match up the percentages and change in our marketplace and responsibility.

Mr. PITTENGER. It is 400 percent, to my understanding. The SEC also has about $75 million contained in its reserve fund, is that correct?

Ms. WHITE. Yes. And I think $52 million of it would be usable.

Mr. PITTENGER. And another $74 million in unused funds, is that correct as well? Did that carry over from the prior year?

Ms. WHITE. We have no-year funds at the SEC. I think we have been working on spending those balances as currently as we can. But they are part of the current budget planning, yes.

Mr. PITTENGER. Are you aware of the observations of many that there has just been a misuse of funds in recent years regarding office space and purchasing new computers and the like for non-existent employees?

Ms. WHITE. Not precisely that, no.

I am certainly aware that there have been prior issues that have been raised in terms of leasing space, which I think has been corrected some time ago. And we are very focused on reducing our footprint. In fact, one of our cost savings has come from our real estate initiative that we have done to really reduce our space requirements even more. I think it is about a $3 million savings annually in that one space.

There have been issues in the past that I think the agency has worked very hard on and successfully—I am not going to say there are no issues in any agency.

Mr. PITTENGER. To the taxpayers that I represent, the gross increase in terms of the budget requirements—these are large numbers—and there is real concern in the accountability of how those dollars are spent.

I yield back.

Ms. WHITE. I take that accountability very seriously.

Chairman HENSARLING. The time of the gentleman has now expired.

The Chair now recognizes the gentleman from Massachusetts, Mr. Capuano.

Mr. CAPUANO. Thank you, Mr. Chairman.

And thank you, Madam Chair. Madam Chair, just a general question, if I owned a corporation, I had 100 shares of stock, and I sold them to 100 different people, who owns the corporation?

Ms. WHITE. The shareholders always own the corporation.

Mr. CAPUANO. The shareholders own the corporation. So they own the corporation. I have two issues then with the SEC. If you believe that, which I am glad you do because I was afraid we were going to have an argument on that, could you talk to me about why, then, the shareholders have no right to know what their, the thing that they own, their money, could you talk to me about why they don't seem to have a right to find out what the thing they own is spending their money on politically? And could you also tell me why the SEC has been—you did something good to begin with, but you got pushed back and did nothing in 5 years on proxy access. Why is it, if you own 3 percent of the stock and have owned it for 3 years, which I think is actually a pretty high bar, you still don't have the right to even nominate somebody to the board. If you own this company, why do you not have those rights? And why does the SEC not stand with the owners?

Ms. WHITE. I think the SEC does stand with the owners in many, many spaces. We talked a little bit earlier about the proxy access, where that sits after the reversal of the rulemaking. It didn't reverse—

Mr. CAPUANO. That was 5 years ago.

Ms. WHITE. It didn't reverse the 14a-8 shareholder proposal piece of that, which is being very actively and I think successfully used by shareholders. This season is particularly active, and I think we have been impartial but supportive there. We have talked before about the political contributions issue. I appreciate the very strong views on that. And there is no specific disclosure requirement in that space unless, in the circumstances of a particular company, the matter is material. And so we have gotten a lot of letters on whether we should do a specific line-item disclosure requirement on that. There are very strongly held views on both sides. It is not currently—and I know that is a frustration—on our agenda. We are very focused on our congressional mandates. And so the other priorities—

Mr. CAPUANO. It is not a frustration. It makes me wonder whose side you are really on. The words are fine. I like everything you said. But the truth is, like everything else, I judge people on what they do, not on what they say. And if you say you are with the shareholders, then let the shareholders do what they do with their own stuff. I wouldn't come to your house and tell you what you should do with your money. Nor should you tell me what I should do with mine. And if I own 3 percent for 3 years, why shouldn't I be able to nominate somebody to the board?

Ms. WHITE. Again, there are provisions that permit that to happen.

Mr. CAPUANO. Why doesn't the SEC stand with the shareholders then?

Ms. WHITE. Again, we talked about the proxy access rule. But we also talked about the shareholder proposal avenue for presenting proxy access proposals.

Mr. CAPUANO. I understand what can be done. But I would argue that the SEC, if you actually do believe that shareholders own the corporation, you should be pushing harder for the shareholders to actually act as if they own the corporation.

And I understand what they can do. I understand that some people are doing it on their own. Congratulations to them.

But there are others who would like to do it but can't get it done. And I would suggest that the SEC should stand with them, as opposed to stand by the side neutrally and say the right things but do nothing about it.

Ms. WHITE. I don't have a further response to that other than I think the shareholder proposal process is working very effectively.

We are very closely monitoring that to see where it goes by way of private ordering.

Mr. CAPUANO. So you are not willing to take an active part? You are just watching it? I had a lot of professors who did that. But they are not the Chair of the SEC.

Ms. WHITE. Certainly our Division of Corporation Finance is quite involved in every proxy season in terms of the shareholder proposals. But just to be clear, we are not, at this point, advancing a required disclosure rule in that space.

Mr. CAPUANO. And here is the problem, most of my constituents, including people in the business, don't really think that the SEC has ever, certainly not now, stood with them. They think that you are captured by the people that you are supposed to regulate. And I think that these two aspects of it—simple things, I am not trying to turn the boat upside down. I am not trying to put an underlying shake in the American financial system. I am simply trying to say that people who own something should have some say on what the thing that they own does, at least have some knowledge. And I would also suggest that if you believe that, you should be standing with the shareholders giving them this much more confidence, not less. And my time is up.

And I appreciate your answers.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Ohio, Mr. Stivers, and he takes notice that today is the gentleman's 50th birthday, I have been informed. He doesn't look a day over 55.

Mr. STIVERS. Thank you. Thank you, Mr. Chairman.

Chair White, I am over here. It is good to have you here. Thanks for you what do.

Really quickly, I want to hit proxy access, and then fiduciary rule, and then, if we have time, MCDC. With regard to shareholders, do shareholders get to approve or deny every proposal that comes up in every public corporation? And do they get a chance to either vote up or down every Director who comes up for a vote?

Ms. WHITE. If that is on the proxy, yes.

Mr. STIVERS. Yes. Thank you. That sounds like they are acting like owners to me.

Can we quickly go through—the mission of the SEC says, from your Web site, that your mission is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. Is that correct?

Ms. WHITE. Yes, it is.

Mr. STIVERS. And I want to talk about the fiduciary rule here for a second. The Commission did a study in 2011. In that Commission study on the fiduciary rule that was required under Dodd-Frank, did it look at the cost for investors, especially small retail investors?

Ms. WHITE. That is certainly one aspect of what we continue to study.

Mr. STIVERS. My understanding is it was not in the study in 2011, am I wrong?

Ms. WHITE. You may not be wrong. I can't answer—

Mr. STIVERS. I just want to put something out there for your thoughtful consideration. I just met with three young, fairly new employees. And they participate in their company's 401(k) plan. They put just a few dollars every paycheck away. If you change the standard for people like Linda and Mark, whom I just talked to, what could happen is they could be priced out of the market because the fees are going to eat up all their money. And they are not going to be able to form capital on their own. And I know capital formation is about business, but people form capital too. And they need to be able to save for their retirement. If you change to a standard that eats up all their cost with fees, it is going to kill them. And it is going to kill their chance to save for retirement. And these are 20- and 30-year-old folks I was just talking to. And we were talking about other stuff. But because I was getting ready to talk to you, I asked them about that. And all of them do participate in a 401(k) program.

As you think through what you are going to do, I would hope you would think of folks like Linda and Mark and what your changes could mean to their ability to save for retirement because what happens when we make a standard that might work for big corporations and rich people is that it leaves the little guy out. And that is what I want to talk about on MCDC too. I just want you to think about that as you go through this because that is what could really happen. It is what we have done with too-big-to-fail. We have hurt our community banks by setting requirements for the big guys. It is what could happen in the fiduciary rule. And it is what I think is happening in the MCDC.

So these fines that you are getting—and MCDC, I understand, you wanted to understand the disclosures of your municipal underwriting folks across the country. And for the big firms, the biggest firms, the fines that are about to be announced in three tranches for you are going to be a rounding error. But for little guys, it can put them out of business. And what we are doing by having a big government, through Dodd-Frank and other things, is we are squeezing out little guys. We are squeezing out the new entrants to the market. I just really worry about it. And I want to ask you what you have learned from the MCDC process—it is new—that maybe you could use to make sure you don't create a system where you have to be big to be involved in municipal securities? What have you learned to make sure that the little municipal issuers aren't going to get squeezed out and pushed out by the fines and the liability and the things they didn't know? And I will give you a few minutes to answer that.

Ms. WHITE. Again, I think we saw a significant problem in that space. I do think the MCDC initiative has been, even to this point, quite successful in addressing that issue and scaled in terms of how one would deal with any outcomes, for example, issuers not being subjected to civil penalties. And, obviously, size matters in that. We will always have to be careful about that.

On the fiduciary duty, I think it is important to act in that space. But it is really for the benefit of retail investors. If we are acting, that is who we are acting for. And, at the end of the day, and I think I said this publicly, if we end up basically depriving small investors of reasonably priced, reliable advice, we obviously would have failed. It is a complex undertaking.

Mr. STIVERS. It is. And the same thing with the MCDC. I have heard from the small issuers. And I have a lot of small towns that dot my district. And they will have problems getting access to capital if you do things like the MCDC wrong because little towns won't be able to issue municipal bonds. I'm sorry to go over, Mr. Chairman. Thank you.

I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Minnesota, Mr. Ellison.

Mr. ELLISON. Thank you, Mr. Chairman, and Ranking Member Waters.

And I thank you, Chair White, for being here. You have already indicated that the SEC would issue a rule on CEO pay-median worker ratio in 2015. Thanks for that. I would like to simply submit this letter for the record, without objection—

Chairman HENSARLING. Without objection, it is so ordered.

Mr. ELLISON. —that we sent to you, Chair White.

Chair White, you have received this letter. And it is the will of at least 58 Members of this body and perhaps even more than that.

And, again, I think it is relevant to a lot of people, not just the public at large but investors. I think research shows that higher ratios correspond to more risky investments. It is something that I regard as important and I appreciate your attention to it.

Also, I wish you would comment on a few other matters regarding the fiduciary rule. Conflicted investment advice costs investors more than $17 billion a year. And I am very concerned that workers are sold IRAs with high fees and hidden commissions that damage their retirement security. And I am supportive of the Department of Labor's decision to move forward with the rulemaking to protect workers. I was wondering if you could comment on why you chose this month to announce that the SEC was going to move forward with its own fiduciary standard.

Ms. WHITE. There is no connection, if I understand the question, to the Department of Labor's announcement. This has been something that, as I mentioned earlier, I have been very focused on since before my confirmation. I think it is an enormously important area. I think the Department of Labor is addressing it in a very important area, their ERISA mandate over retirement accounts, with what they are doing. We are separate agencies. The SEC had been also studying this before I arrived. Obviously, there have been studies and reports that have been presented. I have spent an enormous amount of time with our staff dealing with really what are quite complex issues in order to be able to forward this. I think it is important to forward it. We are really in a sense at the beginning of our process. But I do think we should as a separate agency proceed with the rulemaking.

Mr. ELLISON. Yes. I noted that, I think you made your announcement at the Securities Industry and Financial Markets Association, which, as is its right—it is certainly its right to spend more than $7 million lobbying Congress in part to kill a rule that protects hard-earned retirement savings for workers. And that is where you made the comments that you made.

Ms. WHITE. I said what my position was when I knew what my position was. I think I had indicated at a prior conference at the end of the year, I don't know whether it was there or at a different conference, that I expected to be able to at least state my own personal position, which is all that I have stated, last year. In that particular audience, which has representatives of the investment adviser space as well as the broker-dealer space, both, I thought it was quite an appropriate place—since I was ready to say what my personal position was and people kept asking me for several months—to make that statement there.

Mr. ELLISON. Is there any coordination with the DOL rulemaking process? Or are you just kind of going forward on your own?

Ms. WHITE. Since their initial proposal, which was obviously long before I got to the SEC—I think their initial proposal was in 2010—the SEC staff has provided technical assistance and expertise to the Department of Labor in terms of how this market space works in terms of our registrants, what potential impacts we see on investors and the availability of investment advice if certain rule changes are made. I would expect us, as we go forward, to continue to consult, which I think is very important.

Mr. ELLISON. Do you think it makes any difference whether DOL goes first or your agency goes first?

Ms. WHITE. I think we are separate agencies. And we need to proceed separately when we think the time is right and we have something we think we should be advancing.

Mr. ELLISON. So that would be a yes? You do think—you said separate—

Ms. WHITE. There is no reason that—

Mr. ELLISON. Coordinate.

Ms. WHITE. No, no, I'm sorry. There is no reason to coordinate? No. I am saying we are separate agencies. And, therefore, I think each agency has to decide when to go forward. Clearly, you take cognizance of whatever other regulators do all the time in rulemakings if they go first. We have a similar situation with our Title VII rulemakings for the CFTC for the most part, who has gone first, as I alluded to.

Mr. ELLISON. I will have to follow up in writing because I am out of time. Thank you for your answers.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlewoman from Missouri, Mrs. Wagner.

Mrs. WAGNER. Thank you, Mr. Chairman.

Chair White, thank you for joining us today. In talking about the SEC's agenda, you have had a very busy year so far. And I would like to start by bringing up a few things you said recently on the SEC moving forward with the uniform fiduciary rulemaking, my favorite topic. In a speech from February of this year, you stated that a priority for the SEC would be to determine whether to adopt a uniform fiduciary duty for broker-dealers. And my heart soared, Chair White.

And just a month later, you announced that it was your own personal view that the SEC should act under Section 913 of Dodd-Frank to implement a uniform fiduciary duty and that the SEC would, in fact, move to implement these rules. Now, this seems like a pretty quick turnaround on your part. Yet, in your speech, you didn't mention any kind of what I would call formal analysis performed by the SEC that maybe would have prompted this kind of sudden change. Chair White, I would like to ask, what exactly did change over the course of just one month?

Ms. WHITE. This isn't an abrupt event. But let me explain. Essentially, Dodd-Frank gives the SEC the authority to decide whether to impose a uniform fiduciary duty.

Mrs. WAGNER. Correct.

Ms. WHITE. So the decision for the Commission is whether to do that and then what form it would take. What I have done—and, as I say, I have been very focused on this issue since before my confirmation. I have worked extensively with the staff on all of the many complexities, the data that is developed to date, and reached my own personal decision that I think the SEC should proceed with a rulemaking to impose a uniform fiduciary duty. Lots of challenges to that.

The next steps—and this is not a quick undertaking—are to discuss in detail all aspects of this with my fellow Commissioners while the staff is working on—

Mrs. WAGNER. Following up with what Mr. Ellison was talking about, that this, in fact, didn't have anything to do necessarily with the Department of Labor announcement that they were moving forward on their own rulemaking in that time?

Ms. WHITE. That is correct.

Mrs. WAGNER. It has nothing to do with that?

Ms. WHITE. No. And I have said, long before the Labor Department announced this, that I was going to soon say what my own position was. That was last year. And I have been working very intensively on it.

Mrs. WAGNER. You mentioned that it was your personal opinion. Tell me about what kind of studies, analysis, some kind of empirical basis for moving forward with the rulemaking.

Ms. WHITE. You have a number of studies, some of them actually accompanied the 2011 report that the SEC staff made, that talks about, one issue is—and it is just one issue—talks about investor confusion. I think there is no question that the standards under which broker-dealers and investment advisers operate are different, one being a suitability standard, one being a uniform fiduciary duty standard, where the best interests of the client—

Mrs. WAGNER. Has there been any formal analysis done, any economic analysis done and presented for such a rule?

Ms. WHITE. There are studies on this. But part of what we will be doing with this undertaking is continuing to have our economists study all aspects of this.

Mrs. WAGNER. And you just mentioned it: Do you believe that a rule should demonstrate that there is actual harm, harm to the investors, rather than just confusion?

Ms. WHITE. I think confusion is not a good thing in and of itself. But one would regulate differently, if that was the only issue. I do think when you have two very different standards where financial professionals under the same rubric can make different decisions—one is having to make the decision in the best interest of the client irrespective of their own financial interest; the other doesn't have to do that if the investment is suitable—that has an effect.

Mrs. WAGNER. Being cognizant of my limited amount of time here, I would really encourage you, you said you would have your economists look at this, to actually, dealing with the area of harm versus the standard of care, as opposed to any other standard or confusion, true actual harm, has any study conducted by the SEC taken into account the potential for increased costs? I know that Representative Stivers mentioned this. You talked about both dealers, investment advisers and, more importantly, what I care mostly about, which is the retail investors, the Lindas and the Mikes and the Marks of whom he spoke.

Ms. WHITE. There is no question that is part of the analysis. It is in all our rulemakings, but it is particularly acute in this one.

Mrs. WAGNER. And just one other quick question. Many have argued that changes to disclosures, as well as simplifying the kinds of titles that can be used by financial advisers could help solve some of these issues. Has the SEC considered any such alternatives instead of a brand new, overarching new fiduciary standard?

Ms. WHITE. Well, the answer is yes. I don't think they are mutually exclusive though.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman.

And, Madam Chair, thank you for your attendance. I really appreciate it. My favorite topic is actually market structure. And I am happy to see that, in your testimony, you raise some concerns that I share. I recently drafted a bill called the Maker-Taker Conflict of Interest Reform Act. What we are trying to do is we have a system now where exchanges are offering all kinds of incentives for order flow. They are offering co-location for a fee. They are offering special order types that will allow traders, brokers to get to the top of the queue. And now they are offering significant rebates to brokers who will steer their order flow through their exchange. And the thing I worry about is that the brokers in some cases, not all cases, are chasing order flow and chasing those rebates instead of acting in the best interest of the investor. And I think that is very, very important for retail investors and pension funds, things like that.

And so what I was trying to do is to figure out what the impact of these rebates really is. The least intrusive way I think to do it is to do a pilot program, to pick out 50 or so highly traded stocks and prohibit rebates to be offered on those stocks. So that we would see, obviously, if brokers are trying to chase rebates, we would see a lot of activity in the stocks that carry the rebate. And we would see far less activity in those that don't carry the rebate. I am wondering if the SEC is considering anything like that where we could try to realign the interest of the broker with the interest of the investor.

Ms. WHITE. Very much so. The maker-taker compensation model is very much in the core of what our market structure review folks are looking at. A pilot is a possibility to be able to come to grips with that issue. It is a very complex issue. We have our economists deeply involved, and in those discussions they have said, there really are a number of complexities if we were to proceed with a pilot, a study, that you need to control for. There is certain non-public information, for example, that really would need to be a part of that. Getting the right cross-section and a large enough one would be very much a part of that as well. And so our staff in Trading and Markets is actually preparing quite a detailed analysis of that in conjunction with our economists. It will undoubtedly be on an early agenda for our Market Structure Advisory Committee, which is a cross section of experts and perspectives to give their feedback on it. But we really do think—

Mr. LYNCH. Is that the Committee with the 17?

Ms. WHITE. I think it is 17. I think the first meeting is May 13th.

Mr. LYNCH. I would like to see some of the folks on that committee—I would like to see some of the folks who have been quite outspoken on this, Sal Arnuk, Joe Saluzzi, Haim Bodek, those are all real smart fellows who have been dealing with this high frequency, they probably don't want to serve on it. But I would just like to see some people who are publicly suspect of this whole, the high-frequency trading advantage.

Ms. WHITE. Clearly, our intent is to get that balance and those different perspectives. And, to the extent someone may not be on the committee who has perspectives and expertise—there are more than 17 quite expert representatives. We intend to structure those meetings with a large group, perhaps a roundtable at each meeting, in order to obtain additional inputs at those meetings so that we can get broader participation from folks such as you mentioned. But it is something we are very focused on, very deeply studying. It is complex. And I am happy to have the staff follow up with you.

Mr. LYNCH. Yes, that would be great. I just want to say this, Madam Chair, this issue really affects the integrity of our markets. I know it is complex. Everything is complex. Sometimes I think complexity is an advantage for some people. And I just think, for the protection of our markets, we have to get a situation where a retail investor or a pension fund is not at a huge disadvantage to a high-frequency trader, who has a special order type and has colocation and has the advantages of speed. And, in some cases, there is an information advantage that they have as well.

Ms. WHITE. There are a lot of issues like that, I will say, in this space. You basically have the concern about the conflict of interest for the brokers as it may impact the investor. But you have to consider whether it is yielding better prices and less cost for those retail investors.

Mr. LYNCH. Thank you, Madam Chair.

I appreciate the indulgence of the Chair. I yield back.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Florida, Mr. Ross.

Mr. ROSS. Thank you, Mr. Chairman.

Madam Chairwoman, thank you for being here, especially for your cooperation and your testimony today.

I want to go back to what the chairman alluded to in some of his earlier questioning, and that has to do predominantly with the imposition of prudential banking regulations on non-bank financial institutions such as asset managers and life insurance companies.

Shouldn't the FSOC's primary focus be on making sure that these entities that may have systemic risks, that those are addressed properly rather than turning them over to the Fed to just say, here is a bank-centered prudential banking regulator, you assess it? Wouldn't it be better to put them within the regulator that they already have?

Ms. WHITE. Certainly one of the strong components of FSOC is to have primary regulators there in the process.

Mr. ROSS. Right.

Ms. WHITE. Clearly FSOC, by statute, was given the power to designate non-banks that are systemically important, to subject them to—

Mr. ROSS. Correct. But it would be good to put them with their primary regulator for addressing their systemic risks.

Ms. WHITE. Although it is not how it is structured under the statute. But one of the things that is clearly at the moment where the asset manager review is sitting is to get more information on activities.

Mr. ROSS. Correct. And one thing I want to thank you for, I know that you mentioned back in December that you were going to help develop recommendations to address potential risks in the asset management industry. In fact, one of them is to improve, expand, and update the data and other information the SEC uses to draw conclusions about the risks of asset management industry and develop appropriate regulatory response. How is that coming?

Ms. WHITE. Actively and productively. A proposal is being produced by the staff.

Mr. ROSS. Let me ask you this. How did the asset management industry, if they did at all, contribute to the 2007–2008 financial meltdown?

Ms. WHITE. I think everybody has different things that they point to, but I don't see a lot of fingers pointing to them.

Mr. ROSS. Yes, and they are really not. They manage other people's assets. And I appreciate that.

Ms. WHITE. It is an agency model predominantly.

Mr. ROSS. I appreciate that. And last month, for example, FSOC came out and said, we have some transparency regulations we are going to follow. And I think that is a good step in the right direction.

How would you feel about codifying those transparency requirements?

Ms. WHITE. First, I think transparency is enormously important for FSOC as for any government agency. So I also applaud the steps that have been taken, and I think additional steps could be taken as well. I think one of the—

Mr. ROSS. For example?

Ms. WHITE. I was about to say one thing that I think is smart to do is, it is a relatively young organization and you want to make it stronger as you go. You don't want to sort of freeze it in place maybe with codification.

Mr. ROSS. And not only that, but also with the codification, you also don't subject yourself to the whim of different Administrations, regardless of who may be in charge. But also when you are looking at the designation of a systemically or significantly important financial institution, you want to be concerned, I think, at the very core of how they got there and to give them notice as to: one, that they are now being considered; and two, here is a path to get away from it. And if we were to codify some of this, I think it may give not only the entities themselves, but more comfort to the market.

And so to that end I just wanted to make you aware of a particular bipartisan bill that I just introduced yesterday known as the Financial Stability Oversight Council Improvement Act of 2015. It codifies the transparency. It allows for the procedures for SIFI designation of non-bank financial institutions, it allows for the primary regulator to be provided the opportunity to address the systemic risks.

So I just want to make you aware of this and I hope that you will take a look at this and have an opportunity to even, quite frankly, support it if you are in such a position.

Also, earlier you talked about in your opening, you provide a robust economic risk analysis when looking at the market. Does this also include a cost-benefit analysis of the imposition of regulations?

Ms. WHITE. It does for our rulemakings, yes.

Mr. ROSS. And, for example, with regard to asset managers again, because I have been burying myself in this for a while, the American Action Forum did a study in 2014 that said that an asset manager of mutual funds designated as a SIFI could decrease investor returns by as much as 25 percent.

When you look at a lot of investors that are utilizing asset managers to invest in retirement funds and college education funds, it almost becomes a cost prohibition to have this designation when, in fact, according to this study, an investor can lose as much as $100,000 over the life. So that is something I hope that you would, if you haven't already, take into consideration with regard to the imposition of these non-bank-centered financial institutions.

Ms. WHITE. The only thing I would comment on is what you are looking at in that process is the systemic risk as part of that as well.

Mr. ROSS. Correct.

Thank you. I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Connecticut, Mr. Himes.

Mr. HIMES. Thank you, Mr. Chairman.

And thank you, Madam Chair, for being with us and for the good work that you do.

I want to reserve the bulk of my time to talk a little bit about insider trading, but I do want to weigh in on this active debate we have on the question of a unitary fiduciary standard.

I would hope that most of us would want the nature of that fiduciary standard to prevent people from paying money for products that are sold in which the intent in selling those is more about making money than it is providing the best product.

But setting aside the substance, and I understand that you are statutorily constrained by a system that was set up a long time ago when people had pensions that were managed by other people, of course today we live in a world where more and more people are running their own IRAs and their own 401(k)s.

So my hope would be, and this is really a comment, not a question, that sensing as I do that the average retail investor doesn't really know the difference between an investment adviser and a broker or really note all that much difference between their IRA and their regular brokerage account, that you would help us think through how we could go to a place that just feels like a smart place to be, which is a fiduciary standard, and not have the need for retail investors to need to think that in this account this is what my broker can do, but in this account this is what my adviser can do. That just strikes me as complexity that we ought to statutorily do away with, and I suspect it is statutory.

With respect to insider trading, Congressman Lynch and I have been working on efforts to address obviously the problem that arose as a result of the Second Circuit's *Newman* decision. As you know, the SEC and DOJ have been forced to operate in an environment where there is no explicit statutory prohibition on insider trading, leading to a body of common law that has I think created some odd characteristics in how one might go after insider traders.

Mr. Lynch has submitted a bill. I have one that has similar intent but is slightly different in its mechanics. But I think this is important to get right. It is important to me because, unfortunately, my congressional district has been disproportionately a source of bad actors and alleged bad actors in this area. I am a day or two, I think, from dropping some legislation that I hope you will take a look at. But you made a comment about a similar Senate bill, and your comment was that it is critically important to investors and to our markets that we have strong insider trading laws.

One question I would ask you, and then I have a slightly more technical question, is would it be optimal, if the goal here is to be very clear about prohibitions on insider trading and a fairly streamlined process to actually prosecute inside traders, should we, in fact, pursue an explicit statutory prohibition, or do you think that you can muddle by as you have under common law and the 1933 Act antifraud provisions?

Ms. WHITE. From 10b-5, and then the common law, is where we have our laws on insider trading, and I think it is a strong body of law. Obviously, we have the *Newman* decision that is there. I think it is challenging to codify. The Commission has also considered over its history whether it should actually write a rule as to the parameters of it.

So, it is challenging. The bottom line, which I think you were quoting from me on, is that it is very important to have very strong insider trading laws.

Now, what we are doing, as you mentioned, is we filed an amicus brief in the Second Circuit. We are continuing to bring insider trading cases, including in the Second Circuit, but clearly other circuits do not subscribe to what I think is the overly narrow view of the law that in some aspects the Second Circuit has held. We are proceeding with cases in the insider trading space. It is enormously important to do that, and we are seeing what that ruling is in the Second Circuit.

In terms of statutes to define it, I think it is challenging to do it, but at the end of the day what I am for is the strongest insider trading law that we can have.

Mr. HIMES. But presumably if it can be defined in rules, as it is today, and in common law, it can be defined in statute. And presumably also, if we are talking about sending people to jail for long periods of time, it is probably better that we do that than administratively or regulatorily we do that. No?

Ms. WHITE. That is certainly an argument for doing that. As I say, I think the devil is in the details maybe is not quite the right expression to apply to this, but I think it is challenging to codify it clearly in a way that is both not too broad and retains the strength of the common law. But I would be happy to work and have the staff provide technical assistance on that, because it is enormously important to us as well, obviously, at the SEC.

Mr. HIMES. Yes. Thank you. I am almost out of time, so I am going to have to get your answer to this for the record.

But this is not a legal question. This is really a question that gets to the heart of the Second Circuit's *Newman* decision, and I am struggling to understand why the point that case hinged on, which is whether a tipee has knowledge of a personal gain on the part of a tipper, whether that should in any way, shape, or form be relevant. I understand under current common law it is, but whether it should as a matter of right or wrong determine whether that tipee would be liable.

And I am out of time. So we will pursue that subsequently. Thank you.

Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from California, Mr. Royce, chairman of the House Foreign Affairs Committee.

Mr. ROYCE. Thank you very much, Mr. Chairman. I appreciate it.

Chair White, I had a question for you, but first I would like to thank you for the transparency the SEC provided in opening up the Office of Financial Research's (OFR's) study on asset management and financial stability for public comment. And I would like to ask if you think in general that it is a good idea for the OFR to seek comments on public reports like this, and also do you think it is important for the OFR to consult with agencies or departments with expertise in regulating financial services, like your own, when they are preparing public reports?

Ms. WHITE. I think it is very important to bring to bear the expertise that is in the space in which anybody is acting. And I don't know that anyone would disagree with that. I can't tell another agency how they should handle their own reports. At the SEC not only are we bound by law certainly in our rulemakings to the APA notice and comment process, but we benefit enormously from those inputs.

Mr. ROYCE. On a similar note, DOL has said that input from the SEC has resulted in what they call numerous changes to the proposed rule on fiduciary standards. Can you tell us exactly how many changes the DOL has made? And I am going now to the ones requested by the SEC, trying to figure out if they are taking those changes or not. And also, are there changes that were recommended by the SEC that were not incorporated by the DOL?

Ms. WHITE. I can't comment on specifics because we don't have a public proposal out there. I can say that our staff provided extensive technical assistance. We weren't in the role of a commenter, but rather a provider of expertise and market knowledge to them. As reported back to me, I think our staff found the Labor Department staff quite responsive and receptive to the assistance and the expertise we were providing. I can't kind of tally up precise responses on all of those discussions. It wasn't really in the nature of providing specific comments on a proposal but rather—

Mr. ROYCE. It was a dialogue. But I was just trying to see if recommended changes were actually being made or not.

Ms. WHITE. My sense is that certainly to a degree, the staff reported they were quite responsive to what they were providing them.

Mr. ROYCE. At a recent speech at Tulane University you mentioned a recent takeover bid where we saw a unique pairing of a strategic bidder and an activist hedge fund. And in the same speech you mentioned that highly sophisticated strategies have come to dominate proxy fights and takeover bids, but that it is time to step away from the gamesmanship and inflammatory rhetoric that can harm companies and shareholders alike. And that sounds like good advice to market participants.

I was going to ask if you could expound on your comments. Specifically, I am interested in when the gamesmanship and rhetoric crosses the line into market manipulation.

Ms. WHITE. That is obviously a facts and circumstances situation. And again, I was obviously expressing my own personal view on this. I do think a step back from the rhetoric and the gamesmanship would serve everybody very well on all sides. I think that you have had at least, maybe even beyond the beginnings a very positive development in terms of companies engaging with their shareholders, including activist shareholders in some situations, which can be very constructive. I wasn't talking about any individual or situation, but that just sort of overlay I think is a very constructive one.

Mr. ROYCE. Well, Chair Mary Jo White, I want to thank you again for your testimony here today.

And, Mr. Chairman, I will yield back.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from Delaware, Mr. Carney.

Mr. CARNEY. Thank you, Mr. Chairman, and I thank the ranking member, as well.

Madam Chairwoman, thanks for coming in today. I am always impressed with your testimony, your attempts to be very straight with us and frank, and we certainly appreciate it, I think on both sides of the aisle.

Most of my questions have been addressed, but I would like to touch on a few of those if I can in my 5 minutes.

Mr. Duffy and I, just to illustrate some of the bipartisanship here, worked together on the Tick Size Pilot, and we know you are moving along with that. You answered the questions that he asked. I would just like a brief update on when you think we could have that in place, number one, and what is the major concern. One of the things that we tried to work through in designing it and getting input was how to structure it so we got really good information. The objective of it, of course, is to get more attention to the smaller issue stocks.

Ms. WHITE. And, again, I think it is an enormously important pilot to proceed with. I mentioned before that I think May 6th is the date on which the Commission needs to act on it in terms of—

Mr. CARNEY. When you say “act,” you mean approved to go forward with it?

Ms. WHITE. Yes, in whatever form is. Obviously, we have gotten comments on various features of it. Those comments are being studied very carefully. Two of the major areas of comment—there were many, frankly, or not many, but certainly several—one was the trade at feature where we got a lot of comments; the length that I was discussing with Congressman Duffy as well. But our goal is to get maximum information so we can actually gauge whether increasing these tick sizes will help—

Mr. CARNEY. Yes, some of the commenters have kind of prejudged it, right, and said it is not going to be effective. Well, let’s find out and get good information, as you said. So we would encourage you to move forward with that.

We have also been working, just learning more about venture exchanges, and I have talked to constituents in my district, some of whom have expressed some concern about that. These would be people who work for large institutions, concerns about maybe fraud. They had some issues with that in Canada.

What concerns would you have? Could you share those concerns with me as I continue to look at this issue?

Ms. WHITE. Yes, and I think the venture exchanges are also something we are seriously looking at. Obviously, no decision is made as to whether to proceed or how to proceed. We have approved prior venture exchange applications.

But I think one of the reasons that at least is pointed to for the failure in Canada is, who are you actually having trade on those exchanges? Is it a race to the bottom, which you do not want?

And so when you are setting your listing standards, even though they are not as high in some ways as on the major exchanges, you want to make sure that you are setting them where they ought to be set and you have the disclosures that you need so that you are not setting yourself up for failure and fraud, frankly. So those are issues that you do have to bore into when you are designing this.

Mr. CARNEY. Great. So you have heard a lot on the fiduciary rule from various Members. I would like to associate myself with the comments that Mr. Himes made. What is your overall objective there in striking a balance between the various folks weighing in?

Ms. WHITE. And, again, as I say, it is a complex, challenging rulemaking. The objective is that if you are providing, whatever your title is, investment adviser, broker-dealer, personalized securities advice to a retail investor, that you act in the best interest of that investor without regard to your own financial or other interests.

Now, that is right out of Section 913 in Dodd-Frank. That is kind of the beginning of the rulemaking. You obviously have to specify how do you define that standard, what kind of standard is it, what does it require, how does it impact on current business practices.

And clearly we get parameters in 913 that say that principal transactions and being compensated transactionally are not in and of themselves a violation of a fiduciary duty, and you want to be sensitive, and indeed Dodd-Frank directs you to be sensitive to the existing business models so, as I was mentioning before, you don't end up striking the wrong balance here.

Mr. CARNEY. It strikes me that is the biggest challenge. Is that kind of your sense of it too, in terms of the existing business models out there? And it is one thing to have transparency—look, I know what I am getting into with this product or with that product—but that is, as Mr. Himes I think accurately pointed out, I don't know that we differentiate very well among the various products that are out there.

Ms. WHITE. There are a number of challenges, but I certainly think that is a primary one.

Mr. CARNEY. And finally, I would just like to again associate myself with the remarks of Mr. Lynch and the seriousness with which you took his comments on, I think, very important issues. And you have a lot of important things on your plate. We appreciate your great work on each of them. Thanks.

Ms. WHITE. Thank you.

Mr. MULVANEY [presiding]. The gentleman's time has expired.

I am now in the uncomfortable situation, Madam Chair, of recognizing myself. I would like to assure all of my colleagues that before he stepped out, the chairman handed me the piece of paper that said I was up next.

Mr. Schweikert, I am looking at you. It is not my fault.

So I recognize myself for 5 minutes.

Madam Chair, thanks again for doing this. I want to follow up on an exchange you had with Mr. Neugebauer from Texas earlier today. He asked you about concerns regarding liquidity in the bond markets, and you had indicated, rightly so, that you had recently issued guidance on that topic. I actually have the guidance, or at least I have guidance that the SEC issued in January 2014. I would like to read that to you. I'll take just a second.

It says, "While assets in bond market mutual funds and ETFs have grown rapidly in recent years, dealer capacity in the fixed income markets appears to have undergone fundamental changes. Primary dealer inventories of corporate bonds appear to be at an all-time low, relative to market size. This apparent reduction in market making capacity may be a persistent change, due to the extent it is resulting from broader structural changes, such as fewer proprietary trading desks at broker-dealers and increased regulatory capital requirements at the holding company level."

So given the fact that everybody seems to acknowledge there are concerns regarding liquidity in the bond markets, and given the fact that the SEC's own guidance, which you correctly pointed out to Mr. Neugebauer earlier today, names increased regulation as one of the causes of that liquidity concern, what are you doing to lessen that burden at the SEC?

Ms. WHITE. I think two points there. One is I don't think those were findings but clearly informed observations. I am not trying to split hairs, right?

Mr. MULVANEY. I won't put words in your mouth. I will just tell you what the document is. It is the January 2014 SEC Division of Investment Management Guidance Update.

Ms. WHITE. Yes. Absolutely. I am familiar with the document. All I am saying is I don't think there were findings made as to precise causes, but nevertheless informed statements about what the current state of play is on the regulatory side and in the marketplace. So first, I think you have to identify what actually is the cause.

Mr. MULVANEY. Let me ask you this then, and, again, I don't want to interrupt and I apologize, but do you agree with the guidance update that says that increased regulatory cap requirements at the holding company level contribute to liquidity shortages—not shortages, but lack of liquidity in the bond markets?

Ms. WHITE. I certainly think that is the working assumption, if I could say it that way.

Mr. MULVANEY. Is it your working assumption?

Ms. WHITE. It is certainly a part of the working assumption. And, again, I wasn't trying to split hairs. We control some spaces of regulation and we don't control other spaces of regulation. That is point one.

Point two is that there are various purposes and impacts in regulations. And so one has to decide, even if you come to identify a cause that is hampering liquidity, what are you gaining by that particular regulation.

So, again, I hate to use the word "complex" again, but I think there are tradeoffs there, I guess is a better way to say it.

Mr. MULVANEY. Everybody on this committee recognizes the fact that there are multiple layers of regulation and multiple layers of agencies that have oversight over various institutions. Have you shared that opinion and the opinion contained in the guidance update regarding the regulatory effects on liquidity in the bond markets with other the members of the FSOC?

Ms. WHITE. That has been discussed extensively at FSOC.

Mr. MULVANEY. And can you give us an interpretation as to what is going on?

Ms. WHITE. What I would say is, and, again, FSOC's primary purpose, and it is a really important one, is to, obviously, be focused on risks that are emerging and addressing those risks, and I think across the regulatory space, this probably is internationally as well as domestically, there is a concern about liquidity and particularly, obviously, of interest rates.

Mr. MULVANEY. Is there a concern about overregulation?

Ms. WHITE. I think there is certainly a concern about the effects of regulation in a number of ways. One of the risks that is identified in the FSOC annual report and has been, once you regulate it in one strata of the market, be it a bank, let us say, where does that activity migrate, is I guess, the operative word. And then what do you do about the risk that is there that is not controlled? There is certainly that kind of lens that is being applied.

Mr. MULVANEY. Thank you for that. I want to take my last 45 seconds and completely change topics on you, to something that was near and dear to my heart, something that many of us worked on not only in this committee, but in a couple of other committees over the last couple of years, which was the JOBS Act of about 3 years ago. A big part of it, something I was very excited about, was crowdfunding. You all still haven't done the rules. It has been 3 years. Can you tell us when—

Ms. WHITE. Yes. Can I tell you when? I can tell you that it is a high priority to get done this year. It has proved, as I mentioned a little bit earlier, more complex, even though we knew it would be complex, to get it done so it is workable and still carries out the statutory requirements.

Mr. MULVANEY. There have been some public comments in the markets that perhaps crowdfunding is dead, crowdfunding is not going to proceed. Would you like to take this opportunity to assure folks that crowdfunding is very much alive?

Ms. WHITE. It is very much alive at the SEC. I had a very extensive meeting with the staff yesterday on that very subject.

Mr. MULVANEY. Thank you, Madam Chair. I appreciate that.

And I will yield back the balance of my time and recognize now the gentlelady from Ohio, Mrs. Beatty, for 5 minutes.

Oh, I'm sorry. Mr. Sherman stepped in. I apologize.

Mr. Sherman is recognized. Unless you want to give your 5 minutes to Mrs. Beatty.

Mr. SHERMAN. Chair White, thanks for being here. I am going to ask you about FASB and its lease accounting. I am going to ask you about the Frank and Sherman amendment. I did that last time you were here. Not pulling any punches, but not necessarily getting great.

Okay. Last time I asked you, you said you were aware of the proposal still kicking around the Financial Accounting Standards Board to add $2 trillion to the balance sheets of American business and the terrible impact that would have not only on the companies that you regulate, but many private companies as well that would be in violation of their loan covenants.

FASB is in effect empowered by the SEC, and you were courageous enough last time—courageous may be overstating it—you stood up last time and said your agency has to take responsibility for what they do since you have empowered them. You also said at that time that you would provide a further response for the record. I don't have that one yet.

But what has the SEC done since the last time we talked to see whether the power that you have delegated to the FASB won't come down like a ton of bricks on small companies and on real estate and on the many people engaged in construction?

Ms. WHITE. And if I owe you a response, I will figure out what it is and give it to you. I apologize for that.

Mr. SHERMAN. You just owe me a clear statement to the FASB that if they go forward with this, you will find somebody else to empower with this authority.

Ms. WHITE. This is one, and I know we have had this aspect of the conversation before, where it was actually the SEC staff, I think in 2005, who suggested that FASB undertake this standard setting to capitalize leases.

Mr. SHERMAN. That makes you even more responsible for the disaster that looms.

Ms. WHITE. I know. And, again, all the considerations that you voiced and continue to voice are things that we certainly have bored into. I have talked to our new Chief Accountant about them. But it is one we may not agree with each other on at the end of the day.

Mr. SHERMAN. It is one thing to say, I checked with the Chief Accountant and he thinks that there might be some theoretical argument in favor of what they are doing. Do you have any economic studies that refute the ones that I brought to your attention that says this is an economic disaster in the making?

Ms. WHITE. Again, I haven't seen studies that refute that nor have I seen studies that set forth that thesis.

Mr. SHERMAN. Oh, I have provided them to you and will provide them again.

Ms. WHITE. No, no, and I should respond to those on the record, and I will and promptly because we have—

Mr. SHERMAN. Last time you didn't.

Ms. WHITE. No, no, we have bored into this quite a lot, and I think I want to make sure I have answered all the questions even if we at the end of the day don't agree on that analysis.

Mr. SHERMAN. I would point out that while there may be some "angels dancing on a head of a pin" theoretical reason for what they are doing—and I think they are wrong about how many angels can dance on the head of a pin; I am the only person here who actually enjoys accounting theory—the fact is that if you look at how they have treated research and development expenses, you see they don't stick to accounting theory except when they want to.

And so they violate accounting theory to destroy one part of our economy—not destroy, but significantly hurt one part of our economy—and then we have to spend billions of dollars encouraging research through a tax credit because FASB departs from accounting theory and discourages research. And now in the name of an accounting theory that they are wrong on, they are going to have a devastating effect on two other segments of our economy.

And you can't just say you will look into it, and the Chief Accountant assures you that he has bored into it and he likes what he is doing. We need to know that your agency will be a force for good in this area of our economy.

Ms. WHITE. What I can assure you is that the meetings I have are not, are you okay with it. I do bore into them.

Mr. SHERMAN. Since you have bored into them, can you tell us why we should capitalize leases if that means that tens of thousands of businesses will be in violation of the loan covenants and hundreds of thousands of construction workers will lose their jobs?

Ms. WHITE. Again, I think there are different views on the extent of that impact. I also think there are transition periods that can be applied to minimize the impact.

Mr. SHERMAN. The transition period is way too short for the small businesses, and the effect on construction is unchallenged by any other economic analysis.

I will get you the studies again. Thank you.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Kentucky, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman.

And thank you, Chair White, for your service and particularly your participation in prosecuting terrorists.

Today, I would like to focus on the work of the Office of the Chief Accountant, to follow on the accounting theme, and then if we have time, get a little into the risk retention joint rulemaking.

With respect to the Office of the Chief Accountant, I would like to focus on public remarks that you made and other SEC officials made suggesting that the SEC is considering requiring American companies to transition from GAAP accounting to International Financial Reporting Standards (IFRS). In particular, IFRS does not allow the use of last-in, first-out accounting, as you know, and in contrast the U.S. Tax Code requires the use of LIFO for financial reporting if it is used for tax purposes.

My concern is that if U.S. businesses are required to use IFRS, they would be forced out of LIFO accounting and would be subject to a significant recapture tax that could drive them out of business or force them into debt in order to pay the tax. And this is of particular concern to industries like the bourbon distilling industry in my home State of Kentucky, and other inventory-intensive businesses. Effectively, the SEC here would be changing tax policy without congressional approval.

So the question is, are you aware of this potential impact of moving toward IFRS? Has the SEC considered the costs of transitioning to these international standards for industries and businesses that use LIFO accounting?

Ms. WHITE. I am aware of the issue and clearly have considered I think the range of issues, including those cost issues and, frankly, the legal issue as well, because it is an IRS set of rules as well. But just to be clear, what I have said publicly about the broader issue, and I still believe this should occur, is the Commission should make a statement as to where it is with respect to domestic issuers and IFRS.

Where are we in that sequence? The last time the Commission spoke on that was in 2010. I will speak for myself, and I have the overall objective of a single set of high-quality global standards. That is the objective. I did not mean to imply what the statement will be would be a movement in that direction.

Mr. BARR. In your prepared remarks you do reference Commission staff continuing in Fiscal Year 2014 to monitor and support the activities of FASB and the IASB as they made progress to converge GAAP with IFRS.

Ms. WHITE. Yes, absolutely

Mr. BARR. And so my question is, is this transition a priority? How much of a priority is it with the agency? And is a rulemaking forthcoming?

Ms. WHITE. I can't speak precisely to the rulemaking, our Chief Accountant, as you may know, on his own behalf, not on my behalf or the Commission's behalf, spoke on this subject, I think, in December at the IACPA just in terms of some thoughts he has that he may want to present to the Commission.

But in terms of where we are with respect to the broader issue, we certainly do support the further convergence efforts of IASB. When I say "we," I mean "me," but I think the Commission supports the further convergence efforts that are going on. That is a different issue than do domestic issuers report in IFRS, which we have made no statement about at all.

Mr. BARR. I would encourage you all to consider the LIFO impact on American businesses as you look at that issue.

Really quickly, transitioning to the joint risk retention rulemaking, as you know, collateralized loan obligations are actively managed funds that invest in senior secured commercial and industrial loans to American companies. This is a $300 billion market.

As you consider the SEC's very important statutory mission to facilitate capital formation, I would be interested to hear your take on why the joint rulemaking did not carve out a safe harbor for qualified CLOs in the same way that regulators have carved out a safe harbor for qualified mortgages, especially considering that mortgages, mortgage-backed securities were the principal cause of the financial crisis? And we know that the cumulative impairment rate for CLOs experienced over the life of the asset for the last 17 years, according to Moody's, has been less than 1.5 percent. In fact, CLOs performed very, very well during the financial crisis.

Why are regulators and the SEC in this rulemaking not taking that into account, especially as we talk about liquidity and capital markets and corporate bonds, CLO is another important source for financing? Why are the regulators not taking that into account?

Ms. WHITE. That is an issue we spent a lot of time on in the joint rulemaking. I think the conclusions are set forth in the release, but I can certainly expand on that and get it back to you.

Mr. BARR. Thank you. I yield back the balance of my time.

Chairman HENSARLING. The gentleman's time has expired.

The Chair now recognizes the gentlelady from Ohio, Mrs. Beatty.

Mrs. BEATTY. Thank you, Mr. Chairman.

And thank you, Chair White, for being here today and answering a whole broad array of questions.

My question will reference something that you mentioned not only in your written testimony, but earlier this morning, now afternoon, I think I can bring it up again, when you talked about advancing opportunities to small businesses to raise capital.

Certainly, as we know, small businesses together produce a lot of the economic growth. While I hate to hone in on any one specific, I think if we don't, oftentimes when we represent those groups, others might not. So as people give examples from their districts or from letters or stories that they have received, I am going to focus in on women in particular. Certainly looking at your background, having many firsts prior to coming here, and being the only female sitting here on my side of the aisle today, and looking at my colleague, Congresswoman Love, being the only female on her side of the aisle, I think I might have something we can agree on here.

So when you talk about advancing opportunities, and you also mentioned the SEC's government business form, I guess one of the questions I want to ask is, can you address what specific types of opportunities your office is doing for businesses in general and for women in particular?

Another reason I am focusing on women is just this morning, I received some statistics. I am from Ohio, the 7th largest State in this Nation, and there are 16 of us in our delegation, and I have the largest number of females in my congressional district. So today I speak for them, and it happens to be the end of Women's History Month, so maybe you can help me out by giving us some information that we can use or help you with.

Ms. WHITE. First, I applaud everything you just said on behalf of women. One example I would give you where I am actually rather pleased with the results is through our Office of Minority and Women Inclusion (OMWI) office, where one of the charges OMWI has is with our own contracting dollars. It is $350 million a year or in that range. We are charged with making sure that we are making it possible for minority-owned businesses and women-owned businesses to participate in the process of the contracting that we do.

In fact, I think I brought the number with me: I think 33 percent of our contracting dollars actually went to minority- and women-owned businesses last year, which is a real uptick from all our outreach efforts. We try to also have, I think it is once a month, that our office actually has potential venders come in, potential businesses come in to kind of learn what they need to do to, in effect, to bid on those contracts, apply for those contracts, I think to broaden it out beyond that. But I think that is a good example of where I am pleased with the progress that we have made on it.

When we are dealing with our small business committees, the office I mentioned earlier that is in our Division of Corporation Finance, is devoted solely, really, to the interests of small businesses. We certainly are very focused on encouraging women-owned businesses, and minority-owned businesses to participate. A lot of the questions that our staff answers, which they do, I don't know, 1,200 a year from small businesses, are questions put to us by minority- and women-owned businesses.

So I don't know if that is responsive, but that is a couple of examples at least.

Mrs. BEATTY. Thank you. And thank you for the examples. Maybe we can pass some of those on to some of the other offices who aren't doing as well.

Lastly, I met with some constituents who have expressed some concerns about the effects of applicability of the fiduciary standards being applied to broker-dealers. In your written testimony you stated that the Commission has provided technical assistance to the DOL staff as they consider potential changes to the definition of "fiduciary" under ERISA.

How do you see the SEC interacting with the DOL to ensure that low-and middle-income individuals keep their access to broker assistance regarding investment of retirement savings?

Ms. WHITE. I think first with respect to the Department of Labor, what our staff has done really for several years is to provide technical assistance and expertise to the staff of the Department of Labor. And what is included in that is our judgment from our knowledge of the broker-dealer market spaces, in the retirement area in particular, how a change in the rule might impact investors or the availability of investment advice. Separately, and it really is separately, we are proceeding, or my personal view is that we should proceed with a rule to impose a uniform fiduciary duty. But very much in my mind in doing that are all the complexities and all the impacts, and what we don't want to do is end up with anything that would deprive retail investors of reliable, reasonably priced advice.

Mrs. BEATTY. Thank you.

Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentlelady has expired.

The Chair now recognizes the gentleman from Arizona, Mr. Schweikert.

Mr. SCHWEIKERT. Thank you, Mr. Chairman.

And, Madam Chair, I go through the same thing. Many of the questions I wanted to ask have already been asked, but I want to go back to both Representatives Velazquez and Mulvaney. We asked you about crowdfunding. I was gone for 2 years, now I am back, and I am having the same conversation I had with you when you were kind enough to come talk to me when you very first were appointed in, what was that, April 2013? I would love a little bit of information to understand some of the rulemaking process, the political influence, the outside group influence. Why are we years behind on those rule sets from the JOBS Act, both for crowdfunding particularly and then the enhanced Reg A? We are what, 2-plus years behind the deadlines?

Ms. WHITE. Actually, Reg A didn't have a deadline, but it is a high priority and we may actually move on that as fast as tomorrow.

Mr. SCHWEIKERT. But 2 years ago you used that exact same line with me that it was a high priority.

Ms. WHITE. Yes, I did, and it was and it is a high priority.

Let me talk about crowdfunding. I talked a little bit earlier about that. I think one of the things I did when I first arrived, because we had not proposed the crowdfunding rule, we had not proposed the Reg A-Plus rules, so I prioritized having them proposed, then you have your comment period. We have gotten a lot of comments on the crowdfunding rules, I think over 500, most of them unique comments on all sides of the issue. You don't have enough investor protection in it; it is not workable; it is too costly.

This is one where we knew it was going to be complex. We have the funding portal piece of that we are working very closely with FINRA on, but essentially in order to be as true as we must be to the statutory requirements, the costs, and the workability, it has proved more difficult and taken longer than we anticipated.

I mentioned earlier that I actually had a meeting yesterday at some length with the staff—

Mr. SCHWEIKERT. But, Madam Chair, to this point, would we help you help the public if we would be dramatically more prescriptive when we pass legislation? If we did self-executing deadlines and started to force these rule sets to actually happen, if you and your organization aren't able to finish their work we know where we are? Because right now we have how many States that are doing State-based ones. So you do have incubators and examples out there so you are not recreating the wheel. What am I not understanding?

Ms. WHITE. I think the challenges vary in terms of being less or more prescriptive. Some of the challenges for us are created by the prescriptions because if they are prescriptive we need to carry them out. So, as we have been calling it, more technical assistance before the legislation is passed is needed. I think that is on us to be more interactive about it as well. Because what we are trying to do, a baseline, I don't mean to use that in economic analysis terminology, but a baseline for us is to carry out the statutory mandates. But sometimes those mandates are hard to carry out.

Mr. SCHWEIKERT. But you can understand from my side sitting here, in much of the rest of the world, or industrialized world, there are crowdfunding platforms. And for some reason from conception to today, I am, what, 3 years, and a couple of years behind in the rule sets. Because we hear lots of speeches around this place from many of us saying we need to be helping the little investor, we have income inequality, when actually what we seem to have is an opportunity gap. Oh, here is a way we are going to help that entry-level entrepreneur, and we sit here a couple of years later. So you can understand the frustration.

One sort of side question: With the number of States that have gotten frustrated and just said they are going to do it on their own, will the SEC step in their path if Arizona decides to work with Texas and recognize each other's platforms? Will States be allowed to sort of set up State compacts?

Ms. WHITE. That is one set of issues that we now have because the States have proceeded, and that is not at all a critical remark. I think there—

Mr. SCHWEIKERT. They didn't have a choice.

Ms. WHITE. No. Clearly, I think there is a benefit of a national rule, but once the States have moved constructively, as many of them have, what you want to try to do is accommodate as much of that as you can.

Mr. SCHWEIKERT. Okay. Thank you, Mr. Chairman.

Chairman HENSARLING. The Chair now recognizes the gentleman from New Hampshire, Mr. Guinta.

Mr. GUINTA. Thank you, Mr. Chairman.

And thank you, Madam Chair, for being here today.

This line of questioning has been discussed in the last couple of hours, but I want to go back to it because I still didn't quite hear some of the answers that I was hoping to hear, and it goes back to the fiduciary duty on broker-dealers.

I know it has been stated that back on February 20th at the SEC Speaks Conference, you noted that one of the priorities would be for the SEC to determine whether to adopt a uniform fiduciary duty for broker-dealers. And then approximately a month later, on March 17th, you had stated that it was your personal view that should be done.

I am still trying to understand what happened in that period of time where it appeared that things changed. I was here for most of your testimony, but I didn't hear a very specific and clear answer.

Ms. WHITE. The answer is that nothing really changed other than I had another month of study. I have been studying this issue in great depth for many, many months.

And it frankly is still a "whether" question because it is up to the Commission. I am one of five votes on that Commission. But we need to make a decision whether to proceed, and then obviously, if so, how to proceed.

But this is an issue that grabbed my attention, for want of a better expression, before I was confirmed. Basically, and I said it earlier, when you have essentially identical conduct regulated differently, particularly in the retail investor space, you have to think long and hard about why that regulation shouldn't be the same.

Mr. GUINTA. You mentioned that there was some analysis you relied on. Can you tell me what specific analysis and study you relied on?

Ms. WHITE. It is really the body of analysis that has been done over the years at the SEC by various outside groups who have been studying this. Our economists continue to study it as well.

Mr. GUINTA. Would you provide those analyses to me and the committee?

Ms. WHITE. Sure.

Mr. GUINTA. And then can you tell me what specific analysis you can point to that predicts the impact of the uniform duty for low- and middle-income families?

Ms. WHITE. I can't cite the particular studies that touch on those issues. Clearly, there is more data that our economists are focusing on, on issues including that one. But I can certainly include in the list the ones that touch on that.

Mr. GUINTA. Okay. Do you know what analysis estimate, if they estimated the impact, would be on women and minority investors?

Ms. WHITE. Again, there are several analyses kind of running the gamut in terms of what methodology they use that talks about—

Mr. GUINTA. Did that go into your decision-making in that month here?

Ms. WHITE. All that I studied did. And just in terms of rulemaking, if we advance it, inputs from all sources, including our own economists, will go into that.

Mr. GUINTA. I think this is important because both sides have talked about it. Was there any analysis that you relied on that predicted what, if any, negative impacts there would be for investors that were valued under $50,000?

Ms. WHITE. There absolutely are studies, articles, and academic papers on that I have looked at.

Mr. GUINTA. But was there something specific that you relied on when you made this final decision?

Ms. WHITE. Essentially what I relied on in reaching the view that I have at this point, my personal view, is the full body of evidence that is before the SEC. It is not just the SEC's studies, although that is included in it as well.

Mr. GUINTA. So the potential increase of broker commissions as a result of this was a consideration?

Ms. WHITE. Anything that impacts on, are you depriving retail investors of reliable, reasonably priced advice is a very important consideration.

Mr. GUINTA. Was there anything specific about whether proprietary products would be continued to be offered to customers?

Ms. WHITE. Again, Dodd-Frank Section 913 specifies a number of parameters, including that one.

Mr. GUINTA. But I am trying to get to the analysis. The analysis that you utilized, that you said you utilized, were these items things that you specifically considered?

Ms. WHITE. I don't know how else to say it other than I—

Mr. GUINTA. I know that you are saying it exists generally, but I am trying to get to whether you specifically looked at these analyses and did they have a determining factor in moving forward with these rules.

Ms. WHITE. It is hard to say what moves you to your conclusions, I guess, but what I did was the deepest and broadest dive I could do before formulating my own personal view.

Mr. GUINTA. Okay. I have heard the "broad." I need the "deep." That is what I am looking for.

Ms. WHITE. Okay. Again, I think I have to provide you with the sources, is the only way I know to answer that.

Mr. GUINTA. Would you be willing to provide communications that you had between February 20th and March 17th relative to this rule?

Ms. WHITE. Yes, but I don't think you will see anything. In terms of, you mean, like emails or something?

Mr. GUINTA. Written email, absolutely, yes.

Ms. WHITE. I will obviously take it back to the folks at the SEC. I am happy to provide whatever you need, frankly.

Mr. GUINTA. Okay. I would love to see those communications. That would be great.

Ms. WHITE. Okay.

Mr. GUINTA. Thank you.

I yield back.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Texas, Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman.

And thank you, Chair White, for being here today.

I am a small business owner. I live in Texas. Now, last year you testified that the markets are not rigged. In July of 2014, a staff member from the Federal Reserve Bank of Chicago issued a research paper entitled, "Recommendations for Equitable Allocation of Trades in High Frequency Trading Environments."

Now, first question, are you aware of this paper?

Ms. WHITE. I do recall the paper. It was approximately a year ago, right? Yes.

Mr. WILLIAMS. My second question: Does the Federal Reserve Bank of Chicago have any regulatory responsibility for the conduct of equity markets?

Ms. WHITE. Not to my knowledge.

Mr. WILLIAMS. Did you ask Chair Yellen or the President of the Federal Reserve Bank of Chicago to write this paper?

Ms. WHITE. No.

Mr. WILLIAMS. Has the staff of the Division of Trading and Markets analyzed the paper's nine recommendations, and does the Division have concerns with any of the recommendations?

Ms. WHITE. The answer to that is certainly to a degree the staff analyzed it, because I asked the staff about it, and they had a number of comments about it. I can't give you the detail as I sit here right now, but certainly they have analyzed it.

Mr. WILLIAMS. Do you have any concerns?

Ms. WHITE. About the study or about the—

Mr. WILLIAMS. With some of the recommendations.

Ms. WHITE. I think the answer to that is yes, but I have to get back in and look at what that is so I can be more specific for you.

Mr. WILLIAMS. I think we would like to hear what they are.

Ms. WHITE. I am happy to do it.

Mr. WILLIAMS. All right. Just last year, you stated that the SEC owes a duty to Congress, the staff, and the American people to use the funds they are appropriated prudently and efficiently.

Now, do you believe the SEC has a responsibility to demonstrate that it is a good steward of its current resources before it asks for additional funding? And I am always amazed as a private sector guy how we just have unlimited money up here, at the unlimited line of credit just drawing the people's money until it dies.

So with that, before you answer that, I will note where I come from in Texas my constituents are not overly concerned about the rules, for instance, that we talked about earlier that deal with the CEO pay ratios, which the SEC spent over 7,000 staff hours and $1.1 million in labor costs for a rule that we don't even have implemented yet.

Ms. WHITE. I think all I can say in response to that, and I alluded to it earlier I think as well, is that is a congressional mandate, as are many of other our rulemakings, that I do feel an obligation to carry out and carry out in the most cost-effective way given the statutory requirement. Clearly, there are costs and workability concerns in that rulemaking that require a lot of staff time in order to achieve that objective.

So that is, I think, the explanation. It is the explanation for the resources that have been applied to that. It is a congressional mandate and we want to carry it out because it is our obligation to, but do it in the most cost-effective way we possibly can.

Mr. WILLIAMS. Next question: Earlier this year JPMorgan Chase indicated it would cut back on its fixed income trading desk because of the regulatory requirements and capital costs following the lead of what other investment firms are doing. Are you concerned about these new regulations, that they are reducing liquidity in the U.S. fixed income market?

Ms. WHITE. I have a concern about all impacts, including those that are being occasioned by regulation.

Mr. WILLIAMS. Regulations are killing small business, I will just tell you that. They are choking it to death.

One more question: Last week, the SEC lost a case that it ran through its administrative hearing process. The administrative law judge called the SEC's claim wildly exaggerated.

Will the SEC enforcement staff who did this, who received bonuses for bringing that case, have to pay them back? Because I have listened to your testimony today that you are short of funds to get the job done. If they paid that back, that would help your cash flow, wouldn't it?

Ms. WHITE. I guess I have to say at the outset that case may come to me on appeal. So I can't really talk about the specifics of it. We are also limited by various civil service rules and other things in terms of what we might be able to do in that space were we to make a decision to do that, but I am not commenting on the merits or demerits of that situation.

Mr. WILLIAMS. Right now, it has been deemed wildly exaggerated.

Ms. WHITE. I heard that.

Mr. WILLIAMS. Mr. Chairman, I yield back.

Chairman HENSARLING. The gentleman yields back.

The Chair now recognizes the gentleman from Colorado, Mr. Tipton.

Mr. TIPTON. Thank you, Mr. Chairman.

And, Chair White, thank you for taking the time to be here. I think many of my questions have probably been answered. But just to follow up, quoting you, you just talked a little bit about how confusion is not a good thing, and that you think that you are doing good cost-benefit analysis. I would like you to expand on that for me. I understand your charge is obviously safety, soundness, making sure we have good markets that are moving forward. But talk to me a little bit about that cost-benefit analysis, because right now we are seeing $2 trillion a year nationwide in terms of regulatory compliance in this country.

I share common ground with my colleague out of Texas, Mr. Williams. I am a small businessman. We are seeing more small businesses shut down than there are new business startups. While we want to be able to have those cost benefits, let's look at outcomes. Is the economy really moving? We have the lowest labor participation rate in 37 years right now. Are we stimulating the economy, creating that opportunity for America to be able to succeed?

Ms. WHITE. We certainly want to be doing that. I will say, just in terms of the small business space, the small cap companies, as we would call them at the SEC, I really have tried virtually from the month I arrived here to focus on that space. One size doesn't fit all. And that probably applies across all kinds of spaces, including our equity market spaces. That is one of the reasons we are doing the Tick Size pilot. When it comes to cost benefit, we certainly do that analysis with respect to all of our rulemakings, including those that are mandated.

Mr. TIPTON. When you are talking about benefit, what do you perceive as benefit?

Ms. WHITE. There are a range of benefits: does it protect investors; does it facilitate capital formation; does it prevent the next financial crisis?

Mr. TIPTON. Have we succeeded in capital formation?

Ms. WHITE. We are certainly devoting a lot of effort to trying to succeed there. But, obviously, there are things in the marketplace that I think are impediments to that.

Mr. TIPTON. I just visited—when we are talking about some of the rules and regulations that are going on, some of the stress tests that are going on for banking institutions, last year one of the regional banks in the Western United States had 7,000 pages to complete for the stress test that had been submitted. This year, it was 12,000 pages.

Is that complexity, is that cost, is that impact—because obviously the bank has to be able to take that into consideration in terms of its ability to be able to have capital, to be able to issue loans to the small businesses that you are talking about wanting to be able to help, what is the thought process there?

Ms. WHITE. I can speak from the perspective of the SEC that one of the things that we really do bore into when we are doing our rulemakings is not only the Paperwork Reduction Act, but obviously the impact of administering whatever the rule is on who it is going to be imposed on. But I take your point obviously.

Mr. TIPTON. We haven't succeeded too well when we are going from 7,000 to 12,000 pages in paperwork reduction, obviously.

I would like to shift gears. You are talking about the mission of the SEC, that under Dodd-Frank, it requires the FSOC to do an analysis before it determines that a particular financial institution becomes a SIFI. However, the SEC, Treasury, and the Federal Reserve are members of the Financial Stability Board. And you participated in the designation of insurers like Prudential and MetLife as SIFIs prior to considering the same issues under the Financial Stability Oversight Council. Presumably, a prior decision by the FSB would taint any decision that is going to be coming out of the FSOC. Could you explain to me how you are going to be able to avoid some sort of conflict of interest in terms of predesignating, if you will, when it goes to the FSB than to the FSOC and it happens?

Ms. WHITE. As I mentioned earlier, I didn't actually participate in all those decisions at FSOC, but I did with respect to MetLife, as I think I mentioned before. The SEC's role on the FSB, which has been in existence since 2009, along with Treasury and the Fed as the three U.S. representatives, our staff, basically, as a matter of practice, does not participate in work streams that are solely related to insurance or non-securities areas.

Mr. TIPTON. Actually my point, Chair White, is it seems like the FSB makes a pronouncement and it just flows down. I would like to be able to see some of the independence that is coming through. Can you speak to that?

Ms. WHITE. I can certainly speak on behalf of myself, and that I am totally independent, I think across-the-board, I hope, when it comes to any decision that I make. And certainly were the FSOC to take some action—again, this would be a space at the FSB I wouldn't be participating in. So it is not that kind of a direct connector. And it is up to the national authority, to be defined probably as to what we do domestically. But I feel like I am an independent decision-maker.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Maine, Mr. Poliquin.

Mr. POLIQUIN. Thank you, Mr. Chairman.

And thank you, Chair White, for being here today. I appreciate very much you coming before us. We all know that America's free market, capitalist system has produced some tremendous lifestyles and standards of living for millions of Americans, generations past. It pulled so many people out of poverty going forward, not only in America but in different parts of the world. It also provides us with the tax revenues we need to defend ourselves and to take care of the poor who really need help.

Now, the bloodline of our economy, as you well know, Chair White, is in part the financial services industry and the capital markets because if our small businesses are unable to raise capital to expand, then they have a problem being successful and hiring our people and providing better lives for everybody. Now, in the 2008 recession that hit, that was caused in great part by the collapse of the housing market, the result of that, in part, was a wide net, Dodd-Frank regulations that now has been expanded it seems like more and more over our entire financial services industry.

And one of the results of Dodd-Frank, of course, as you know, is the Financial Stability Oversight Council, on which you sit. And you folks are responsible for designating which financial institutions here in our country are systemically important financial institutions or SIFIs. Now, a great concern I have, Chair White, is that in our mutual fund industry or pension investment industry, the money management business, I am very concerned that this wide net of Dodd-Frank is now about to engulf them and designate them as SIFI organizations. And here is why I am concerned. If there are 2 money managers and they are both managing, pick a number, $100 billion for their clients, and one manager has poor performance for a period of time and the other manager has better performance for a period of time, then the first manager is going to be fired and the clients are going to go over to the second manager. But all the assets that they run are housed at a trust department down the road somewhere. So there is clearly no systemic risk to the economy or to the capital markets by these investment management firms being designated and so regulated as SIFIs.

So my concern is that if you have a middle-class family up in Ellsworth, Maine, that I represent in our Second District, and you have a paper maker from the Bangor area and his wife is a teacher, and they are putting aside $50 a week to save for their retirement, and they want to have a nest egg at the end of 20 or 30 or 40 years of working very hard in their professions. But, all of a sudden, if you have these investment companies that are helping their nest egg grow such that they can retire in dignity, without being dependent on the government, if we cast that net, Chair White, over these pension investment firms, these mutual fund companies that represent no risk to our capital markets, no risk to our economy, I am fearful that the products they will offer will shrink and the fees that they charge will go up. And then the rates of return that they generate for their clients who are trying to save for retirement will go down.

In fact, Dennis Ross, a little bit earlier, mentioned a report by the former Director of the CBO, Mr. Holtz-Eakin, saying that, in fact, if that happens, you could see a 25 percent reduction in the growth rate, the rate of return of these savings for college kids going to school or people trying to retire. So my plea to you, Chair White, is that you sit on FSOC, along with Treasury, along with the Federal Reserve, you have the authority, and I hope you will speak up, to make sure the pension fund business, the mutual fund business, those that are responsible for helping our families grow their nest eggs and retire in dignity won't be held under this umbrella because it will only hurt them. Do I have that commitment from you today?

Ms. WHITE. You certainly have my commitment that I will speak up on all those issues and others.

Mr. POLIQUIN. I appreciate that. Thank you very much, Chair White. I would also like to encourage you to resist any temptation from the Federal Reserve or the Department of Labor or anybody else to take the authority that you have at the SEC to regulate non-bank financial institutions. You folks have been doing it for 80 years. You have the experience. You have the tools. And I am concerned that if these money management firms that are trying to provide savings, power, if you will, for our middle-class families, if they fall under regulations or under the regulatory authority of the Fed or the DOL that has no experience doing this, it will only hurt the people we are trying to help. So I would encourage you, please stand up and be heard—I know you will—and make sure that you regulate these money managers as you always have.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentlelady from Utah, Mrs. Love.

Mrs. LOVE. Thank you, Mr. Chairman.

And thank you, Chair White, for being here today. Those of us who are freshman Members really appreciate you staying and answering some questions for us. So I want you to know I really appreciate it. I want to talk a little bit about Dodd-Frank and then try and get into capital formations if I can. Our time is limited. So I just wanted to get through these as quickly as possible.

During the implementation or the development of the proposal to implement Section 619 of the Dodd-Frank Act, commonly known as the Volcker Rule, the banking regulators, led by the Federal Reserve, attempted to write a rule addressing trading and investment practices, activities that fall within the core competencies of the SEC. In your opinion, should the SEC have taken more of a leadership role in developing the Volcker Rule to ensure that the final rule was consistent with the SEC's mission and maintenance of robust capital markets?

Ms. WHITE. Again, the Volcker Rule provided some prescriptive steps and rules that were required under that rulemaking. It did not actually require the regulators to act jointly. It did require us to act in consultation. We ended up, which I think is a very good thing, acting jointly. From my perspective, I think the SEC was quite active; the staff was quite active; and I was quite active in providing inputs from our market-making, underwriting markets perspective.

Mrs. LOVE. Okay. Would you agree that the final Volcker Rule makes it difficult for banks to buy or sell securities for their own inventory in anticipation of clients' demand because managing the inventory can look like proprietary trading?

Ms. WHITE. Certainly, that is an implementation challenge. But, obviously, there are prohibitions and there are exemptions. We tried to make the exemptions as workable as possible given those constraints.

Mrs. LOVE. Okay. In 2009 and 2010, as Congress drafted the Dodd-Frank Act, it rejected proposals to strip the SEC of its market oversight authority and declined to transfer the registration of investment products to what ultimately became the Bureau of Consumer Financial Protection. Would you agree that the SEC regulates markets that are inherently risky?

Ms. WHITE. Yes. The markets are built on taking risk. That is what fuels innovation, the economy. You want it to be prudent risk. You want to have the disclosures you need to have, but yes.

Mrs. LOVE. Would you also agree that the risks taken by investors are essential to capital allocation, which, in turn, is critical to economic growth?

Ms. WHITE. Again, I think the kind of risk I am talking about underlies our capital markets. You want to disclose to investors what they need to know.

Mrs. LOVE. So, is that a yes?

Ms. WHITE. I think that is a yes.

Mrs. LOVE. Okay. Does the bank-dominated FSOC reject your authority to propose and possibly adopt changes to oversight of asset managers?

Ms. WHITE. No. What FSOC is doing at the moment on the asset managers is requesting information on various activities of asset managers. SEC staff was very much a part of that. We have proceeded—as I think I said earlier, we are proceeding with a number of regulations in that asset management space. That is the SEC, not FSOC.

Mrs. LOVE. Okay. I have just a little over a minute. And I wanted to really get back to this because this is obviously very important to this body. We are approaching the 3-year anniversary of the JOBS Act without several of the major components being effective. Can we expect the Commission to finalize the JOBS Act rulemaking for crowdfunding?

Ms. WHITE. The answer to that is yes.

Mrs. LOVE. Okay. Will you commit to finalizing this rule by the end of Fiscal Year 2015?

Ms. WHITE. What I will say is it is a high priority for 2015. And I had a huge meeting on it yesterday to move it forward.

Mrs. LOVE. You are asking for $1.77 billion, and this is incredibly important.

Ms. WHITE. I agree that it is incredibly important.

Mrs. LOVE. And I would like to know if you would commit to finalizing this rule before the end of Fiscal Year 2015?

Ms. WHITE. It is on our agenda to complete by then. And we are working very hard to make sure we can make good on that commitment.

Mrs. LOVE. Okay. So no commitment to do that?

Ms. WHITE. My commitment is that we are according it the highest priority to get it done in 2015.

Mrs. LOVE. Okay. I am out of time. Thank you.

Chairman HENSARLING. The gentlelady's time has expired.

The Chair now recognizes the gentleman from Arkansas, Mr. Hill.

Mr. HILL. Thank you, Mr. Chairman.

Chair White, thank you for being here. Thank you for your long, wonderful service to our country. We appreciate your leadership.

You made a comment a few minutes ago—you said you had pride in your independence, independent thought as it related to the FSOC. And I presume that you and your fellow Commissioners believe at the SEC that you are an independent regulatory agency?

Ms. WHITE. Yes, we do.

Mr. HILL. And the fact that your budget comes to appropriation before the Congress doesn't in any way limit or cause you to feel less independent, I wouldn't think?

Ms. WHITE. No, it doesn't.

Mr. HILL. Thank you. My friend Rick Ketchum over at FINRA has a proposal that I think you are familiar with, which is referred to by the acronym CARDS. I wonder what your view is on that?

Ms. WHITE. That is, again, by virtue of the regulatory structure, a rulemaking that will come to the SEC to pass on. So I can't really comment on the merits of it. I can say I am familiar with it. I am familiar with the many comments that have been made in response and I am familiar with the fact that FINRA is working through, taking very seriously those comments. Should they advance the rule, it will come to the SEC for approval, notice and comment and so forth.

Mr. HILL. One thing that I think we have talked about, liquidity, and I think a lot of my fellow members of the committee were primarily talking about the government securities market and issues around the Volcker Rule, but I want to turn to the liquidity of another market that is extremely important to millions of investors and then all of our cities and towns, and that is in the municipal finance market. I am interested in your views on the MSRB's rule G-23, which limits the financial advisory arms of BDs from participating in anonymous auctions for municipal securities. Can you give me your views on that?

Ms. WHITE. I might have to come back in detail on that. It is one that the SEC has approved, I think at this point. So that is some indication of my position on it, although that is done by the staff and by delegated authority. One of the things that I mentioned at one of the two speeches I gave in June on some of these market structure issues is that I thought it was very important for the MSRB to advance the best execution rule. I also thought that it was very important for both FINRA and the MSRB to forward what is referred to as the riskless principal disclosure rules. That entire market I think bears the attention and priority that it is getting now. We, again, are more limited in that space from a regulatory point of view than we are in other spaces.

Mr. HILL. It is my view, as somebody who has some familiarity with those markets for some period of time, that if one were to increase potential buyers in a competitive bid, an anonymous, competitive bid process, that you would increase liquidity and benefit the issuers, the public entities, and the revenue or GO market and, obviously by virtue of that, the investors that buy the issue at the offering price. From what I can tell from looking at the data, the rule, when you exclude that FA side of a BD's business, you are limiting market participants and, therefore, limiting competitive bids, maybe cutting them in half potentially. So I ask you to look at that from a competitive and liquidity point of view because in our capital markets and the public finance arena, we want more business. And our investors are benefited by having more bidders because these are mostly long-term, as you know, buy-and-hold investors. And that improves best execution. So I would encourage you to look at that.

The final topic I would like to raise with you today is this issue, again, on what I have sort of described as the war on savings. And I group all of those things together, the 529 proposal that was withdrawn, the DOL proposal that is in discussion, the increasing capital gains taxation, the removing of stepped-up basis, the cap on IRA accounts. Back in the ancient history when I served at Treasury, we were demanded to increase savings and to create more ways to encourage Americans of all income levels to save and improve our capital markets that way. And I would like to talk to you a little bit about the fiduciary standard and just add my views. You have heard a lot about it today.

I think that there are the suitability rules that we have, the know-your-customers rules that we have. The elaborate performance that brokers and financial advisers go through with their clients is more than sufficient to let the customer make a decision whether they want that fiduciary relationship or an agency relationship. And I want to add my weight of my comments, that I don't think there is an automatic benefit to the capital markets by going fiduciary only. And I really urge you to reconsider your thinking there. Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired.

The Chair now recognizes the gentleman from Pennsylvania, Mr. Rothfus.

Mr. ROTHFUS. Thank you, Mr. Chairman.

And thank you, Chair White. Not only are the freshman glad that you are sticking around, but this sophomore is glad as well. So, thank you. I read an article earlier this year from Gallup entitled, "American Entrepreneurship: Dead or Alive." The article begins by saying that the United States ranks 12th in terms of business start-up activity when compared with other developed nations. This is a pretty troubling statistic at a time when we are trying to grow the economy and create more jobs. This is where I turn back to one component of the SEC's statutory mission: facilitating capital formation. I understand the SEC held its annual small business capital formation seminar this past November. Can we expect to see the SEC taking any action on its own to move forward with any ideas raised at that forum?

Ms. WHITE. There were a lot of ideas discussed at that forum, and as we speak, the staff is analyzing those for my benefit and the benefit of my fellow Commissioners.

Mr. ROTHFUS. Will we be seeing any kind of public statement about it, taking those ideas and—

Ms. WHITE. I think we have to complete the review and analysis of them. But again, as I said earlier, I am certainly very focused, as are a number, if not all, of my fellow Commissioners on intensifying what we can do for capital formation by small businesses. The Tick Size pilot, and what we are doing in the disclosure effectiveness review, are examples of that. Some of those recommendations, by the way, came from that forum as well as our Small Business Committee.

Mr. ROTHFUS. We have had some good success in Pittsburgh. It is one of the top cities attracting new technology companies in recent years. This sector is growing, thanks to venture capitalists, angel investors, and others. A large part of the positive progress is related to the top-notch educational institutions in our area and local firms that are willing to support the local startups. This growth is certainly welcome in western Pennsylvania. But we need to have this going across the country. That leads me to a question about what the SEC may be doing, if anything, with respect to looking at its rules and regulations and how you are keeping those updated. Has the Commission taken steps to consolidate or eliminate rules that are out-of-date or ineffective?

Ms. WHITE. We certainly do a retrospective review under the Reg Flex Act. And we also take input from all kinds of sources as to rules we ought to either consolidate or change in some way.

Mr. ROTHFUS. Can you give some specific examples of some of the regulations you are taking a look at?

Ms. WHITE. We basically look at them periodically. If they are major rules, every year. It is sort of a rolling basis.

Mr. ROTHFUS. Is there one or two that you could highlight?

Ms. WHITE. I can get back to you on some specifics and where we have moved on them.

Mr. ROTHFUS. I would appreciate that. Looking at the topline summary of the SEC's budget justification, there is a significant emphasis on enforcement versus rulemaking. The Commission's request states that the top priority would be to hire 225 additional examiners. This is significantly higher than the proposed resources dedicated to economic and risk analysis and rulemaking. Why is the SEC making its top priority hiring 225 additional examiners instead of the SEC focusing on furthering the delayed rulemaking process?

Ms. WHITE. I think to go for the economic analysis, our DERA unit, if we can call it that, which houses our economists who obviously participate in the analysis, including cost-benefit analysis of all the rulemaking, is our fastest growing division. They are one of the great success stories of the SEC, and we have sought additional resources for them as well. I think we now have 90-plus economists, up from about 40 just a few years ago. So you can only hire so many well and smartly. In terms of the examiners per se, and I spoke about this a little bit earlier as well, that is an area where I think we really have a responsibility to try to meet that gap in terms of our ability to cover exams. It is not enforcement but exams of investment advisers which are also for the benefit of the markets and the investors.

Mr. ROTHFUS. Again, as has been said, we are concerned about the JOBS Act and getting those rulemakings done.

Ms. WHITE. Absolutely.

Mr. ROTHFUS. You have noted previously that when disclosure gets to be too much or strays from its core purpose, it could lead to what some have called information overload. By allowing our disclosure regime to become the de facto vehicle for more and more human rights campaigns, do we run the risk of compounding the information overload problem that you previously highlighted?

Ms. WHITE. Again, as part of our disclosure effectiveness review, we are trying to deal with a number of those issues to make our disclosures more effective. It really is not reducing it, but making it more effective and more investor-friendly but—

Mr. ROTHFUS. Would you agree that the information overload in SEC filings may actually be confusing and distracting to investors who are seeking to make informed investment decisions based on material information?

Ms. WHITE. The core of our disclosure powers should be directed to what is material to investment decisions and voting decisions. And certainly one of the things we look at is whether we have information in there that is distracting from that core purpose.

Mr. ROTHFUS. Thank you. I yield back.

Chairman HENSARLING. The time of the gentleman has expired. The Chair now recognizes the gentleman from Illinois, Mr. Dold.

Mr. DOLD. Thank you, Mr. Chairman. Chair White, I certainly appreciate you sticking around.

Thank you so much for your testimony and for being here, and thank you for your service to our country. This is I think the end, so a short little time here—at least for today, I hope.

I want to associate my comments, first of all, with my colleague, Mr. Hill from Arkansas. And I certainly hope that we all are looking for ways to try to encourage more savings. And so his words, the war on savings, I hope that we are all looking to try to make sure that we can put policies in place that encourage more savings throughout our country at all different levels.

I wanted to talk for a second about accredited investors. And certainly the definition of "accredited investor" purely on income or net worth, I think is somewhat antiquated and counterproductive. And, as I am sure you are aware, the United Kingdom added another mechanism and measurement really revolving around education so that they are actually able to go through and take a test to be able to be considered an accredited investor. So I just wanted to say, is the Division considering an educational component as you begin to update the definition of "accredited investor?"

Ms. WHITE. The Division of Corporation Finance, together with our economists, is doing a very deep dive into an "accredited investor" definition and considering all possible parameters, beyond net income, net worth, sophistication, licensing, education, and testing. The entire range is being considered.

Mr. DOLD. I certainly hope so. It seems odd to me that you could have a law degree, an MBA, have graduated from college, and just because you don't have the income or net worth, you are not going to be considered able to invest in certain securities.

I wanted also to talk to you for a second about your written response in September of 2014 to Chairman Hensarling regarding the SEC's post-JOBS Act capital formation agenda, which really didn't have a whole lot of Commission-generated ideas to enhance capital formation beyond the congressionally mandated rulemakings and JOBS Act. What are some of the specifics that the Commission is looking at to improve capital formation?

Ms. WHITE. I guess I would mention three. I think there are more than that. And some of the JOBS Act provisions are also ones that both our advisory committees and the staff were working on as well. And they are obviously very important ones and important ones for us to finish also. The Tick Size pilot is one example, as well as the disclosure effectiveness review, and the consideration of venture exchanges. And then we do have our dedicated unit in Corporation Finance that really is focused in the rulemaking sense, and in the service sense exclusively on small businesses and what their needs are.

Mr. DOLD. I certainly appreciate that, being a small business owner. Small business is vital to Main Street and, frankly, for job creation.

I wonder if I might be able to switch to Business Development Companies (BDCs). Business Development Companies have seen a fairly rapid increase in growth over the past few years, from about $4.7 billion in assets under management in 2002 to about—at least my calculations are $73.1 billion in 2014, providing loans to small and middle-market businesses, again, going back to that idea that most of the net new jobs are created by these small businesses. This growth stems from the demand capital that the BDCs are filling. So what is the SEC doing to help support the growth in this important industry? And, in particular, what efforts are under way to modernize the regulations?

Ms. WHITE. That is being looked at by our staff, in part in connection with one or more bills that I think were pending last session. So it is area where I think there are a number of ideas that are out there, some that might give us some concern, but it is clearly a very important segment of the economy.

Mr. DOLD. Okay. So there is nothing—

Ms. WHITE. There is nothing imminent, no. But I can, again, get back to you with sort of the outlines of what we are doing on that.

Mr. DOLD. In a letter you wrote to the committee in October of 2013 regarding some proposed BDC legislation, you indicated that a number of those provisions in a bill—and I do believe that one of my colleagues is going to also offer some legislation; if he doesn't, I will—posed no investor protection concerns. These also happen to be provisions that have not been updated for 30-plus years. And you have the authority right now to modernize and fix it. What have you done or what do you plan to do to help modernize these rules?

Ms. WHITE. Again, it is something that the staff is reviewing. We obviously have a very full agenda. I am not minimizing the importance of BDCs on that. But I think I would have to really probably follow up for the record in terms of where that fits into our planning.

Mr. DOLD. I would appreciate it if you would do so.

My time has expired. Thank you, Mr. Chairman.

Chairman HENSARLING. The time of the gentleman has expired. There are no other Members in the queue. So I would like to thank the witness for her testimony and her patience today.

The Chair notes that some Members may have additional questions for this witness, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to this witness and to place her responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

This hearing stands adjourned.

[Whereupon, at 1:34 p.m., the hearing was adjourned.]

A P P E N D I X

March 24, 2015

Testimony on "Examining the SEC's Agenda, Operations and FY 2016 Budget Request"
by
Chair Mary Jo White
U.S. Securities and Exchange Commission

Before the
Committee on Financial Services
United States House of Representatives
March 24, 2015

Chairman Hensarling, Ranking Members Waters, and members of the Committee:

Thank you for inviting me to testify regarding the recent activities and current initiatives of the U.S. Securities and Exchange Commission (SEC), our fiscal year 2016 budget request, and our planned agenda to continue to fulfill our critical three-part mission: to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.[1]

Since I testified before this Committee last April, the SEC has accomplished a great deal in many areas important to our mission and in fulfilling Congressional mandates. Over the last year, informed and supported by rigorous and robust economic analyses, the Commission has, for example, adopted a series of very important reforms, including rules directly responding to the financial crisis, and the integrity of our markets. We have made substantial progress implementing the rulemakings mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Jumpstart Our Business Startups Act (JOBS Act). The rules on which the Commission has taken action on in the last year include:

- *Asset-Backed Securities.* The Commission completed rules requiring significant enhancements to registered offering disclosures for asset-backed securities, a market with \$4.8 trillion in issuances over the past decade that includes the types of securities backed by residential and commercial real estate that played a central role in the financial crisis.

- *Credit Rating Agencies.* The Commission finalized over a dozen rules that will reduce conflicts of interest and strengthen the integrity of nationally recognized statistical ratings organizations and the transparency of their ratings. The Commission also continued to remove references to credit ratings, bringing the total of removed references to 30 and leaving only four rules and one form with references to be removed.

- *Money Market Funds.* The Commission completed reforms designed to enhance the structure and operation of the \$3.7 trillion money market fund market to enhance the protection of investors and to support financial stability.

- *Security-Based Swaps.* The Commission proceeded with the next critical phase of its implementation of Title VII of the Dodd-Frank Act, adopting new rules for previously

[1] The views expressed in this testimony are those of the Chair of the Securities and Exchange Commission and do not necessarily represent the views of the full Commission, or any Commissioner.

unregulated derivatives by mandating the parameters for covered entities and establishing registration and reporting requirements for security-based swap data repositories. In particular, in June 2014 the Commission adopted the first of a series of key rules and guidance on cross-border security-based swap activities for market participants, and earlier this year adopted rules that require security-based swap data repositories to register with the SEC and prescribe reporting and public dissemination requirements for security-based swap transaction data.

- *Capital Formation.* The Commission advanced rules to implement JOBS Act provisions concerning registration and reporting thresholds under Exchange Act Section 12(g). On March 25, the Commission is scheduled to consider the adoption of a potentially transformative rule under the JOBS Act to significantly enhance the existing Regulation A exemption from registration for small offerings of securities.

- *Risk Retention.* As required by the Dodd-Frank Act, the Commission approved a joint agency rule requiring sponsors of securitization transactions to retain risk in those transactions.

- *Market Stability and Oversight.* The Commission adopted Regulation Systems Compliance and Integrity (Regulation SCI), creating for the first time mandatory technology and systems standards and reporting for significant market participants intended to reduce systems issues and improve the overall resiliency of our markets. Also on March 25, the Commission is scheduled to consider a rule proposal to enhance the supervision of large proprietary trading firms, including those engaged in high frequency trading, that have come to play an important role in the U.S. equity markets.

- *Executive Compensation.* As required by the Dodd-Frank Act, the Commission proposed rules for enhancing corporate disclosure of hedging policies for officer and directors.

Substantial progress has also been made in our assessment of U.S. equity market structure to ensure that our markets remain the deepest and fairest in the world and optimally serve investors and companies of all sizes seeking to raise capital. In addition to the adoption of Regulation SCI, we have published for notice and comment a proposal by the self-regulatory organizations (SROs) for a pilot to assess the impact of different tick sizes on the quality of the equity markets for small capitalization issuers. In response to my request, the exchanges conducted and completed an in-depth analysis of order types and reported on their findings, and have filed proposed rule changes that improve disclosures about how they use securities information processor (SIP) feeds and direct feeds. I have also asked the exchanges and SIPs to incorporate a time stamp in their data feeds to facilitate greater transparency on the issue of data latency, which I expect will be operationalized this summer. We have also brought a number of significant enforcement actions for violations of market integrity rules. In addition, recently we created an equity market structure advisory committee to focus on the structure and operations of the U.S. equities markets (including Regulation NMS) and provide a formal mechanism through which the Commission can receive advice and recommendations specifically related to equity market structure issues. The membership of the committee reflects a diversity of backgrounds, expertise, and viewpoints on our current equity market structure that we expect will provide valuable input as SEC staff continues to pursue, at my direction, a broad market structure agenda focused on high frequency trading and fairness, market transparency, trading venue regulation, mitigating broker conflicts, and critical market infrastructure.[2] Staff also continues to pursue ideas to improve the market structure for trading fixed income securities, including municipal and corporate bonds, and is developing a far-ranging package of measures for enhancing the asset management industry's risk monitoring and regulatory safeguards.

We are also advancing our initiative to improve the effectiveness of the public company disclosure regime for investors and companies, where the staff has sought input from a broad range of market participants and is developing recommendations for the Commission's consideration. In addition, consistent with the Dodd-Frank Act, staff is currently engaged in a comprehensive review of the "accredited investor" definition.

The Division of Enforcement continued to achieve significant results, filing 755 enforcement actions and obtaining orders for more than $4.16 billion in disgorgement and penalties in fiscal year 2014. Notable actions include the first series of cases involving violations of the "market access" rule, the first action enforcing the "pay to play" rule for investment advisers, the first action against a private equity firm relating to its allocation of fees and expenses, and the first anti-retaliation case to protect a whistleblower who reported improper trading activity. Structural improvements – including increased recruitment of industry experts, the augmentation of our data analytics capacities, and enhanced training programs – within our Office of Compliance, Inspections and Examinations have led to a more effective, efficient examination program.

The agency's emphasis on technological improvements is continuing to pay dividends, improving efficiencies while allowing us to cover more ground than ever before. In FY 2016, the SEC plans to build on the substantial progress made over the past few years to modernize its technology systems, streamline operations, and increase the effectiveness of its programs. Key information technology initiatives include:

- *Data analytics tools* that assist in the integration and analysis of huge volumes of financial market data, employing algorithms and quantitative models that can lead to earlier detection of fraud or suspicious behavior.

- *EDGAR modernization*, an ongoing, multi-year effort to simplify the financial reporting process to promote automation and reduce filer burden, including on small companies.

- *Examination improvements* aimed toward improving risk assessment and surveillance tools that will help the staff monitor for trends and emerging fraud risks, as well as improving the workflow system supporting SEC examinations.

- *Enterprise Data Warehouse*, a centralized repository for the SEC to organize its disparate sources of data and help the public gain easier access to more usable market data.

[2] To help ensure that a full range of viewpoints is represented, the committee will invite relevant industry and public participants to present and discuss the topics to be addressed at each meeting.

In recent years, the agency's responsibilities have dramatically increased, with new or expanded jurisdiction over securities-based swaps, private fund advisers, credit rating agencies, municipal advisors, and clearing agencies. As the SEC's jurisdiction has grown, so too has the size and complexity of the markets and entities within it. The SEC is charged with overseeing over 25,000 market participants, including broker-dealers, investment advisers, transfer agents, exchanges, and others. From fiscal year 2001 to the start of fiscal year 2015, for example, the assets under management of SEC-registered investment advisers increased approximately 254 percent from $17.5 trillion to approximately $62 trillion (up about $7 trillion from last year alone), assets under management of mutual funds grew by some 143 percent to $15.6 trillion, and trading volume in the equity markets more than doubled to in excess of $67 trillion. With respect to fixed income, the total principal amount of corporate bond issues outstanding is approximately $11.6 trillion, and the total principal amount of municipal bond issues outstanding is approximately $3.6 trillion.

It is critical that the agency be able to keep pace with the rapid expansion of the size and complexity of the securities markets and the entities over which it has jurisdiction. Although improvements to technology and operations have made the agency more efficient and effective and recent growth in the SEC's budget has permitted the agency to begin to address gaps, more is needed to match our resources to our growing mandates and the increasing complexity of the markets. There continues to be an immediate and pressing need for additional resources to permit the agency to increase its examination coverage of registered investment advisers and investment companies so as to better protect investors and the nation's securities markets. We are advancing our ongoing assessments of ways to improve the U.S. equity and fixed income markets and the opportunities available to small businesses to raise capital to ensure that our markets and our entrepreneurs can serve their vital roles in promoting economic growth. Moving forward the initiatives focused on improving the risk monitoring and regulatory safeguards of the evolving asset management industry also are essential. We must also further leverage cutting-edge technology to better keep pace with the entities and markets we regulate, continue to strengthen our economic and risk analysis functions, and hire additional experts to further our expanded rulemaking and oversight responsibilities.

We must continue our work in these and other areas, and we are doing so with intensity. Ultimately, our policies and initiatives will be judged on whether we have implemented and enforced rules that create a strong and effective regulatory framework and stand the test of time under scrutiny in rapidly changing financial markets. It will also be measured by our ability to continue to execute and improve on our existing regulatory, enforcement, and examination programs. In performing all of our work, I fully recognize our responsibility to be effective and prudent stewards of the funds we are appropriated, and believe our accomplishments to date reflect how seriously we take that responsibility.

Below I have highlighted the work of each of the SEC's Divisions and a number of its Offices, including information on the SEC's substantial progress in implementing the Dodd-Frank and JOBS Acts. I also include below a brief discussion of the SEC's fiscal year 2016 budget request.

Issuer Disclosure and Capital Formation

The Division of Corporation Finance (Corporation Finance) regularly and systematically reviews the disclosures and financial statements of thousands of reporting companies and selectively reviews documents that companies file when they engage in public offerings, business combination transactions, and proxy solicitations, in each case to enhance compliance with our rules to help ensure that investors have access to material information to inform their investment and voting decisions. During fiscal year 2014, Corporation Finance staff reviewed the annual and periodic reports of over 4,300 companies and, in addition to other selective reviews of transactional filings, more than 600 registration statements by new issuers. Corporation Finance also maintains specialized offices with legal and accounting experts that support filing reviews, undertake reviews of specialized filings, provide interpretive guidance on rules and regulations, participate in numerous Commission rulemaking projects, provide specialized expertise in enforcement matters, evaluate the outcomes of our filing review program and conduct ongoing assessments to evaluate the effectiveness of our internal supervisory controls. Below is an overview of several key Corporation Finance initiatives.

Dodd-Frank Act Rulemakings

Since its passage, the Commission has adopted rules implementing Dodd-Frank Act mandates on accredited investors, say-on-pay, asset-backed securities, compensation committee listing standards and disclosure, conflict minerals, and disqualifications for felons and other bad actors. In addition, the Commission has proposed disclosure rules on CEO pay ratio and hedging of equity securities by employees and directors (Sections 953(b) and 955 of the Dodd-Frank Act). During 2014, the Commission adopted final rules governing the disclosure, reporting, and offering process for asset-backed securities and, along with the other financial regulators, rules implementing the credit risk retention requirements of the Dodd-Frank Act.

Corporation Finance, along with other Commission staff, continues to work to implement provisions of the Dodd-Frank Act relating to executive compensation matters and payments by resource extraction issuers. In addition, the staff is currently conducting the review of the accredited investor definition as it relates to natural persons as mandated by Section 413 of the Dodd-Frank Act.

JOBS Act Rulemakings

Corporation Finance also has rule writing teams that have been working with staff throughout the Commission to complete several JOBS Act mandates.

In July 2013, pursuant to Title II of the JOBS Act, the Commission adopted the final rules to allow general solicitation and general advertising for offers and sales made under Rule 506 of Regulation D, provided that all securities purchasers are accredited investors and issuers take reasonable steps to verify that purchasers are accredited investors. The rules became effective in September 2013. In conjunction with the adoption of these final rules, the Commission also issued a rule proposal that would enhance the Commission's ability to assess the development of market practices in Rule 506 offerings and that would address concerns that may arise with the use of general solicitation by issuers in these types of offerings.

In October 2013, as mandated by Title III of the JOBS Act, the Commission proposed rules to implement the new exemption for the offer and sale of securities through crowdfunding, an evolving method to raise capital using the Internet. The Commission received over 500 comment letters on this complex rulemaking and Corporation Finance is preparing recommendations for the Commission on final rules.

In December 2013, as mandated by Title IV of the JOBS Act, the Commission proposed rules that would build upon Regulation A, which is an existing exemption from registration for small offerings of securities, to enable companies to offer and sell up to $50 million of securities within a 12-month period. The Commission received over 100 comment letters, and the Commission is scheduled to consider adopting a final rule on March 25.

In December 2014, as mandated by Titles V and VI of the JOBS Act, the Commission proposed amendments to revise the rules related to the thresholds for registration, termination of registration, and suspension of reporting under Section 12(g) of the Exchange Act. The Commission received comments, and Corporation Finance will develop recommendations for the Commission on final rules.

The division, on behalf of the Commission and in partnership with the U.S. Small Business Administration (SBA), also hosts events to inform small business owners and entrepreneurs about new options for capital raising under the JOBS Act. These very well-received events highlight additional ways small businesses may seek to raise funds under current and proposed Commission rules and give small business owners an opportunity to ask questions of the Commission and SBA staff.

Study and Review of Public Company Disclosure Requirements

The JOBS Act also required the Commission to conduct several studies. In addition to studies completed in prior years, in December 2013 SEC staff submitted to Congress a report that reviewed Regulation S-K to determine how it may be modernized, made more effective, and simplified to reduce the costs and other burdens for companies at all stages of development.

Following the issuance of the report, I directed Corporation Finance to lead the SEC staff's efforts to develop specific recommendations for updating and modernizing the disclosure rules – primarily Regulations S-K and S-X – to improve the disclosure regime for the benefit of both companies and investors. Corporation Finance is developing recommendations for updating the requirements to facilitate timely, material disclosure by companies, and also is considering whether there are other potential changes that may enhance investors' access to material information.

A key component of this project includes public outreach to market participants on how the Commission might enhance its disclosure rules and filing requirements to make them more meaningful for investors and less burdensome for issuers. In addition, SEC staff is coordinating with the Financial Accounting Standards Board to identify ways to improve the effectiveness of disclosures in corporate financial statements and to minimize duplication with existing disclosure requirements.

Trading and Markets

The Division of Trading and Markets (Trading and Markets) supervises the major participants in the U.S. securities markets, including securities exchanges, broker-dealers, clearing agencies, transfer agents, FINRA, security futures product exchanges, and securities information processors. Trading and Markets also works closely with the Office of Municipal Securities to supervise the Municipal Securities Rulemaking Board (MSRB) and municipal advisors.

Trading and Markets is continuing its significant efforts to implement key areas of the Dodd-Frank and JOBS Acts. The division is responsible for more than 30 separate rulemaking initiatives and studies under the two statutes, including a number that will create new ongoing supervisory responsibilities upon completion. Within the SEC, Trading and Markets has also led interagency projects mandated by the Dodd-Frank Act, including interagency staff recommendations for the designation of systemically important non-bank financial entities and financial market utilities under the auspices of the Financial Stability Oversight Council and, in conjunction with the Board of Governors of the Federal Reserve (FRB) and the Federal Deposit Insurance Corporation (FDIC), mechanisms for the orderly liquidation of certain large financial companies, including certain large broker-dealers under the new liquidation authority established by the Dodd-Frank Act.

OTC Derivatives

Trading and Markets has continued to engage in rulemaking to establish a new oversight regime for the OTC derivatives marketplace. Most recently, the SEC adopted two new sets of rules that will require security-based swap data repositories (SDRs) to register with the SEC and prescribe reporting and public dissemination requirements for security-based swap transaction data. The SEC also proposed certain additional rules, rule amendments, and guidance related to the reporting and public dissemination of security-based swap transaction data. The new rules are designed to increase transparency in the security-based swap market and to ensure that SDRs maintain complete records of security-based swap transactions that can be accessed by regulators. In addition to the adoption of these rules, in 2014 the SEC proposed the last of the remaining rules required by Title VII of the Dodd-Frank Act and adopted a number of significant final rules and interpretations, including rules governing the application of the "security-based swap dealer" and "major security-based swap participant" regimes to cross-border security-based swap activities.

The staff continues to work to develop recommendations for the remaining final rules required by Title VII that have been proposed but not yet adopted, including those addressing, the registration of – and requirements for – security-based swap dealers and major security-based swap participants, security-based swaps execution facilities, and the enhanced oversight of clearing agencies for security-based swaps. Currently, the Title VII rulemakings are a very high priority for the agency.

Review of Equity Market Structure

The SEC's review of equity market structure has continued to progress with a data-driven approach that has helped identify areas where improvements in the regulatory structure may be warranted. Drawing on the Commission's equity market structure website, the Market Information Data Analytics System, and other data resources, Trading and Markets is working on a series of rulemaking initiatives to present to the Commission for consideration in the near future, including:

- A rule proposal scheduled to be considered on March 25 that would eliminate an exemption from national securities association membership requirements for broker-dealers that trade in off-exchange venues;

- Rules designed to improve firms' risk management of trading algorithms and to enhance regulatory oversight of their use;

- Rules that would expand the information that alternative trading systems (ATSs) disclose to the SEC about their operations and, for the first time, to make ATS operational information publicly available;

- An order-routing transparency rule that would require disclosure of customer specific information that a broker would be expected to provide to institutional customers on request;

- An anti-disruptive trading rule to address the use of aggressive, destabilizing trading strategies in vulnerable market conditions when they could most exacerbate price volatility; and

- A rule regarding the status of active proprietary traders as dealers.

To improve transparency regarding the latencies between the consolidated data feeds of SIPs and the proprietary feeds of the exchanges, I requested that the exchanges consider including a time stamp in the consolidated data feeds to indicate when a trading venue, for example, processed the display of an order or execution of a trade. In response, the exchanges have announced plans to add new data elements to make data feed latencies more transparent; the exchanges expect to implement the time stamps by this summer. In addition, at my request, the exchanges have submitted rule changes to disclose how they use SIP and proprietary market data feeds in their operations, thus increasing transparency.

The exchanges also have undertaken a comprehensive review of their equity order types and how they operate in practice. Our review of the exchange submissions is ongoing, but substantially all the exchanges have filed proposed rule changes to describe fully order-type functionality. For example, each exchange's rulebook will fully describe the characteristics of its order types (e.g., price, display, routable, provide liquidity only); the functionality of the order type (e.g., how and when it interacts or does not interact with other order types with respect to the full range of potential order book and execution scenarios); the relative priority of the order type; and the way in which an execution of the order type will be priced taking into account the full range of potential execution scenarios.

Strengthening Critical Market Infrastructure

Recent market events demonstrate the need to bolster resilience throughout critical market systems. After the August 2013 interruption in the trading of Nasdaq-listed securities, the equities and options exchanges, FINRA, and the clearing agencies have been working with other market participants to implement concrete measures designed to improve the robustness and resilience of market systems. Many of these measures are now complete, including enhancements to the SIPs and enhanced rules for the trade break processes at equity exchanges.

In November 2014, the Commission adopted Regulation SCI, an important set of mandatory rules aimed at strengthening the technology infrastructure of the U.S. securities markets. Regulation SCI imposes requirements on key market participants – including national securities exchanges, registered clearing agencies, FINRA, the MSRB, and certain ATSs – designed to reduce the occurrence of systems issues, improve resiliency when technology issues arise, and enhance the Commission's oversight of the automated systems of these entities. The staff is considering whether it would be appropriate to develop an SCI-like framework for other types of market participants

Tick Size Pilot for Smaller Companies

In 2015, I expect the Commission to continue its evaluation of the appropriate tick size for the quoting and trading of equity securities of smaller companies. Current rules, which have been in effect since decimalization was introduced in 2001, permit market participants to quote securities priced $1.00 or more in increments as low as a penny.

After conducting a study and issuing a report required by the JOBS Act, as well as holding a roundtable to gather views on the impact of decimalization, in June 2014 the Commission issued an order directing national securities exchanges and FINRA to act jointly in developing and filing a national market system plan to implement a pilot that would, among other things, widen the quoting and trading increments for certain small capitalization stocks. The national securities exchanges and FINRA filed their proposed plan with the Commission, which the Commission published for public comment in November 2014. The Commission has received over 70 comment letters from various interested constituencies and has extended the time period for consideration of the proposed national market system plan until May 6, 2015.

The Volcker Rule

In December 2013, the SEC, the FRB, the FDIC, the Office of the Comptroller of the Currency, and the Commodity Futures Trading Commission adopted a final rule under the Bank Holding Company Act to implement Section 619 of the Dodd-Frank Act, commonly referred to as the "Volcker Rule." The final rule applies to "banking entities," which generally are defined to include insured depository institutions and their affiliates.

Banking entities generally have until July 21, 2015 to bring their activities and investments into conformance with the final rule, with additional time provided for certain legacy covered funds activities. The largest banking entities, however, became subject to a metrics recordkeeping and reporting requirement in July 2014. Commission staff continues to coordinate with staffs of the other agencies on implementation of the final rule, including on compliance, enforcement, and responses to interpretive questions.

Fiduciary Duty

Section 913 of the Dodd-Frank Act granted the Commission authority to impose a uniform standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers, while at the same time specifying certain features of current business models that would not themselves be a violation of such standards. The question of whether and, if so, how to use this authority is a very important one.[3]

After significant study and consideration, I believe that broker-dealers and investment advisers should be subject to a uniform fiduciary standard of conduct when providing personalized securities advice to retail investors. As set forth in Section 913, the financial professional giving advice to a retail client should be required to provide advice that is in the client's best interests, without regard to the financial or other interests of the financial professional.

In proposing a uniform fiduciary standard, there are many challenges. At this juncture, I will just mention three of them. The first is how to define the standard. My initial view is that the standard should be codified, principles-based, and rooted in the fiduciary duty applicable to investment advisers. A second challenge, which was expressly contemplated by Section 913 of the Dodd-Frank Act, is to provide clear guidance on what the standard would require, and how current business practices can or cannot continue under the standard – importantly, for both broker-dealers and investment advisers. A third challenge is providing for the meaningful application, examination, and consistent enforcement of a uniform fiduciary standard. Without effective examination and enforcement, a uniform fiduciary standard could be mere words on a page. Central to this challenge is extending our examination coverage for registered investment advisers.

[3] In January 2011, the Commission submitted to Congress a staff study required by Section 913, which addressed the obligations of investment advisers and broker-dealers when providing personalized investment advice about securities to retail customers, and recommended, among other things, that the Commission exercise the discretionary rulemaking authority provided by Section 913. In March 2013, the Commission issued a public Request for Data and Other Information relating to the provision of retail investment advice and regulatory alternatives, which sought data to assist the Commission in determining whether to engage in rulemaking, and if so, what the nature of that rulemaking ought to be.

I will be discussing these concepts in depth with my fellow Commissioners in the very near term, and I have asked the staff to develop rulemaking recommendations for Commission consideration. As part of its analysis, the staff is giving serious consideration to, among other things, the recommendations of the SEC staff's Section 913 study of 2011, the views of investors and other interested market participants, potential economic and market impacts, and the information we received in response to a 2013 staff request for data. Included in the staff's work will be recommendations for the Commission's consideration of a program of third party compliance reviews for investment advisers to supplement, but not replace, examinations conducted by the Office of Compliance Inspections and Examinations (OCIE).

Separately, the Commission staff has provided technical assistance to Department of Labor staff as they consider potential changes to the definition of "fiduciary" under the Employee Retirement Income Security Act (ERISA). The staff and I are committed to continuing these conversations with the Department of Labor, both to provide technical assistance and information with respect to the Commission's regulatory approach and to discuss the practical effect on retail investors, and investor choice, of their potential amendments to the definition of "fiduciary" for purposes of ERISA.

Oversight of Investment Funds and Managers

The SEC's Division of Investment Management (Investment Management) primarily administers the SEC's regulatory and disclosure-review functions for mutual funds, other investment companies, and investment advisers. As part of these functions, the Commission and the division oversee registered investment companies with a combined $17.8 trillion in assets under management and registered investment advisers with approximately $62 trillion in assets under management.

Money Market Funds

In July 2014, the Commission adopted significant reforms for governing money market mutual funds. The amendments are intended to reduce the risk of runs in money market funds, provide important tools to help further protect investors and the financial system in a crisis, and enhance the transparency and fairness of these products for America's investors.

Under the new rules, "institutional prime" money market funds will be required to maintain a floating net asset value based on the current market value of the securities in their portfolios. The rules also provide new tools for boards of directors of money market funds to directly address heightened redemptions in a fund. Specifically, fund boards will be able to impose liquidity fees or to suspend redemptions temporarily, also known as "gates," if a fund's level of weekly liquid assets falls below certain thresholds. The Commission provided for approximately a two-year transition period for these new provisions to enable both funds and investors time to fully adapt their systems, operations, and investing practices.

The new rules also enhance money market fund disclosure requirements. Money market funds will be required to promptly disclose certain significant events, including the imposition or removal of fees or gates, portfolio security defaults, and instances of sponsor support. In addition, money market funds will be required to disclose additional key information on their website on a daily basis, including funds' liquidity levels, net shareholder flows, and market-based net asset values per share.

Risk Monitoring and Regulatory Safeguards

Pursuant to Section 965 of the Dodd-Frank Act, Investment Management established a new risk and examinations office (REO). REO monitors trends in the asset management industry and carries out the division's inspection and examination program. In addition, REO and other SEC staff periodically meet with the senior management of large asset management firms and fund boards as part of the staff's ongoing outreach efforts.

At my direction, Investment Management also is developing recommendations for Commission rulemaking with the goal of enhancing risk monitoring and regulatory safeguards for the asset management industry. Specifically, the division is developing recommendations for the Commission to modernize and enhance data reporting for both funds and advisers. This initiative, among other things, would: (i) update the reporting of basic fund census information; (ii) enhance reporting of fund investments in derivatives, liquidity valuation of holdings, and securities lending practices; and (iii) collect more information on separately managed accounts.

In addition, Investment Management is considering whether enhanced risk management programs should be required for mutual funds and ETFs to address the risks related to their liquidity and use of derivatives, and measures to enhance the Commission's comprehensive oversight of those programs. In particular, the division is reviewing options for updated liquidity standards, disclosure of liquidity risks, and measures to appropriately limit the leverage created by a fund's use of derivatives. Investment Management also is developing a recommendation to require investment advisers to create transition plans to prepare for the winding down of their business or similar business disruptions, and is considering recommendations regarding implementation of the new requirements for annual stress testing by large investment advisers and funds, as required by the Dodd-Frank Act.

Target Date Funds

On April 3, 2014, the Commission issued a release reopening the period for public comment on proposed rule amendments concerning target date fund names and marketing. The release requested comment on the SEC's Investor Advisory Committee recommendation that the Commission develop a glide path illustration for target date funds based on a standardized measure of fund risk as a replacement for, or supplement to, the asset allocation glide path illustration the Commission proposed in 2010. To date, approximately 30 comment letters have been submitted, which Investment Management staff are currently reviewing.

Economic Analysis, Risk Assessment, and Data Analytics

The Division of Economic and Risk Analysis (DERA), our fastest growing division, integrates sophisticated analyses of economic, financial, and legal disciplines with data analytics and quantitative methodologies in support of the SEC's mission. The division has grown significantly over the past few years. In particular, with the addition of 45 new positions in FY

2014, DERA's overall staffing level has grown to nearly 150 positions. This growth has deepened staff expertise and enhanced the already significant divisional support for rulemaking and policy development, enforcement and inspection activities, and data analytics and processing.

DERA plays a central role in the development of Commission rules and policy initiatives. A substantial portion of DERA staff, including Ph.D. financial economists with sophisticated knowledge of the financial markets, is dedicated to providing economic analysis in support of policy initiatives and participating directly in the rulemaking process. Specifically, DERA staff works closely with other divisions and offices to examine the need for regulatory action, analyze the potential economic effect of rules and other Commission actions, assist in evaluating public comments, and provide support, where needed, for the review of SRO rules and actions.

DERA economists develop and author a range of data-driven analyses of economic issues to inform the public and the Commission on important aspects of the financial markets, including the development of new rules for those markets. For example, over the past year, DERA, working collaboratively with staff throughout the Commission, has developed economic analyses for a broad range of rulemakings, such as those involving money market fund reform, security-based swaps, asset-backed securities, credit ratings agencies, and market structure, including analyses of high frequency trading.

DERA staff also provides up-to-date economic analyses relevant to policy development. For example, DERA economists, working closely with staff in the Division of Trading and Markets, added two analytical memoranda to the comment file for the Regulation Security Based Swap Reporting rulemaking in advance of the adoption of those regulations. These memoranda examined the effects of post-trade transparency in the swaps market and performed a sophisticated analysis of hedging behavior in the security-based swap market. In addition, DERA staff authored several white papers and published research in academic journals on areas of interest to the Commission's policymaking. These papers are posted to the SEC website and are vital to facilitating the Commission's and the public's access to data-driven economic analyses of the financial markets.

DERA also provides risk assessment and data analysis to the Commission in support of a range of other SEC activities. These activities help to focus the agency's resources on matters presenting the greatest perceived risks in areas such as examinations and registrant reviews. Recently, DERA established a new Office of Risk Assessment that is focused on providing financial and risk modeling expertise to other offices and divisions to support supervisory, surveillance, and investigative programs related to corporate issuers, broker-dealers, investment advisers, and exchanges and trading platforms. In addition, staff in DERA has played key roles in several important cross-agency risk assessment initiatives, such as the Broker-Dealer Risk Assessment Model, developed in close cooperation with OCIE, which helps prioritize examinations of broker-dealers by comparing each broker-dealer against its peers in multiple risk categories. Working closely with the Division of Enforcement's Fraud Task Force and other staff across the agency, DERA also has developed the Corporate Issuer Risk Assessment program, a tool to assist SEC staff in detecting anomalous patterns in financial reporting.

DERA also provides extensive support to the Division of Enforcement, allowing Enforcement to utilize in-house economic expertise. Among other things, DERA assists Enforcement by using economic analysis to identify potential liability, analyze materiality, calculate ill-gotten gains and monetary penalties, develop and respond to expert testimony, and support the distribution of recovered funds to harmed investors.

DERA relies on structured data to perform sophisticated analyses to support its effort on rulemakings and risk assessment activities, and also works closely with the Division of Corporation Finance to facilitate the provision of high-quality XBRL data as part of financial filings. Most recently, DERA has launched an initiative to facilitate the analysis of corporate financial data by making available to the public combined and organized structured datasets that provide selected information extracted from XBRL exhibits to corporate financial reports.

DERA has also continued the expansion of the innovative Quantitative Research and Analytical Data Support initiative, which addresses the Commission's need to further develop and refine high quality financial market data and robust analytical processes by centralizing data resources. The program will enhance the Commission's ability to link important financial market information originating from a wide variety of sources, allowing staff to make connections across markets and entities not previously possible.

Enforcement of the Securities Laws

A strong and effective enforcement program is at the heart of the SEC's efforts to protect investors and instill confidence in the integrity of the markets. The Division of Enforcement (Enforcement) advances these efforts by investigating and bringing civil charges against violators of the federal securities laws. Successful enforcement actions impose meaningful sanctions on securities law violators, result in penalties and disgorgement of ill-gotten gains that can be returned to harmed investors, and deter wrongdoing.

Enforcement continued to achieve significant results on behalf of investors in FY 2014. The SEC brought the highest number of enforcement actions to date, 755, and obtained monetary remedial orders at its highest level, totaling over $4.16 billion. The quality and breadth of the actions pursued, however, are the most meaningful measures of a strong and effective enforcement program, and the SEC's actions in FY 2014 addressed significant issues, spanned the entire spectrum of the securities industry, and included numerous first-of-their kind actions. Enforcement focused on innovative, high impact cases and punished and deterred wrongdoers in a way that sent important messages to the market, including by obtaining more admissions.

Admissions Policy

Since changing its long-standing settlement protocol in 2013, the SEC has obtained admissions of misconduct in a number of cases where heightened accountability and acceptance of responsibility by a defendant is particularly important and in the public interest. These types of cases include those involving particularly egregious conduct; where large numbers of investors were harmed; where the markets or investors were placed at significant risk; where the conduct undermines or obstructs our investigative process; where an admission can send an important message to the markets; or where the wrongdoer presents a particular future threat to investors or the markets. The SEC has settled numerous cases containing admissions, including recently requiring a major financial firm to acknowledge wrongdoing in connection with its execution of sales of billions of shares of securities and its failure to file required Suspicious Activity Reports, and requiring an investment management firm to admit that it made false and misleading statements to investors. While most cases will continue to be resolved on a "neither admit nor deny" basis,[4] the SEC will continue to require admissions or other acknowledgements of wrongdoing where appropriate, and will be prepared to litigate those cases if necessary.

Market Structure, Exchanges, and Broker-Dealers

Sophisticated trading technologies, such as algorithmic and automated trading, have transformed the securities markets and may present significant risks to investors and the markets. To promote fair trading and equal access to information, the SEC brought significant actions in the past year against exchanges and other trading platforms for violating rules governing their operation, broker-dealers for failing to live up to their obligations as gatekeepers and providing direct market access, and other market participants for manipulative trading and related abuses. Noteworthy cases included actions charging:

- A major exchange and two affiliated exchanges with repeatedly engaging in business practices that either violated exchange rules or required a rule when the exchanges had none in effect;
- A brokerage firm that operates an ATS with improperly using subscribers' confidential trading information in marketing its services;
- A high frequency trading firm that accounts for a significant portion of the U.S. trading volume and its former chief operating officer with repeatedly violating the net capital rule and related recordkeeping provisions and filing requirements;
- The owner of a brokerage firm with a manipulative trading practice known as "layering" which involves tricking investors into buying or selling stocks at artificial prices driven by orders that are later cancelled;
- A large market access provider and two officials with violating the market access rule (Securities Exchange Act Rule 15c3-5) by failing to have adequate risk controls in place before providing market access to customers, including some customer firms with thousands of essentially anonymous overseas traders;

[4] In many cases, the Commission, like other federal agencies with civil enforcement powers, determines that it is appropriate to continue to settle on a "no admit, no deny" basis. This practice allows the Commission to obtain significant relief, eliminate litigation risk, return money to victims more expeditiously, and conserve enforcement resources for other matters.

- Two national securities exchanges with failing to accurately describe the order types being used on the exchanges; and

- A large broker dealer with disclosure failures and other securities law violations related to the operation and marketing of its dark pool.

Insider Trading

The SEC has continued to actively pursue insider trading violations by a wide variety of market participants. Two recent examples of the SEC's efforts in this area include an action charging three founders of a software company with insider trading ahead of the company's sale by misusing nonpublic information to take unfair advantage of incorrect media speculation and analyst reports, and an action charging four individuals in a $12 million serial insider trading scheme in which they traded in stock options based on nonpublic information about monthly sales results leaked by a former company employee. Staff also is developing new technology that will allow it to more effectively identify trading patterns and find connections between traders and their potential sources.

Financial Statement and Accounting Fraud

Enforcement has intensified its focus on identifying and investigating financial reporting and accounting fraud, and the SEC brought a number of significant actions involving inaccurate revenue recognition, auditor independence problems, and false and misleading financial disclosures in FY 2014. For example, a large pharmacy recently paid $20 million to settle charges that it misled investors about significant financial setbacks and used improper accounting that artificially boosted its financial performance in connection with a bond offering.

To better focus on financial reporting and auditing violations, Enforcement created the Financial Reporting and Audit Task Force in the fall of 2013. The Task Force's mandate is to develop methodologies and tools for detecting financial reporting issues, identify specific issuers with potential violations, determine whether further investigation is warranted, and refer appropriate matters to investigative staff. As part of the SEC's ongoing efforts to hold gatekeepers accountable for failing to carry out their important duties and responsibilities consistent with professional standards, Enforcement also launched a risk-based initiative to identify auditors who may have violated the federal securities laws or failed to comply with U.S. auditing standards during their audits and reviews of financial statements for publicly traded companies. In FY 2014, there was a significant increase in financial reporting and auditing filed actions and investigations.

Investment Advisers

In FY 2014, the SEC brought actions against a wide range of investment advisers, including those who engaged in fraudulent conduct, had deficient compliance programs, and breached their fiduciary duties to their clients. The SEC also filed a number of actions arising from recent Enforcement initiatives focusing on custody rule violations, and misconduct related to adviser fees and expenses. Enforcement in conjunction with DERA also developed and implemented the Aberrational Performance Inquiry, which focuses on identifying unusual performance returns posted by unregistered and registered hedge fund advisers. To date, the Commission has brought more than ten enforcement actions as a result of this initiative.

Foreign Corrupt Practices Act (FCPA)

The SEC actively pursues companies that bribe foreign officials to obtain or retain business. In FY 2014, the SEC brought significant and impactful FCPA cases, obtaining orders for over $380 million in disgorgement and penalties. For example, the SEC brought FCPA actions charging a global beauty products company with failing to put controls in place to detect and prevent payments and gifts to Chinese government officials by a subsidiary. As in other areas, the Commission is focused on holding individuals accountable in FCPA cases, and recently charged a former officer at an engineering firm with authorizing bribes and employment to foreign officials to secure those officials' government contracts, as well as two former employees of a U.S.-based defense contractor for taking foreign government officials on an elaborate "world tour" to help secure business for the company.

Municipal Securities

The Commission has filed a number of significant actions in the past year in the area of municipal securities and public pensions, including the first emergency action to halt a fraudulent bond offering; an action charging a state with fraud for failing to disclose its multi-billion-dollar pension liability in bond offering documents; and a series of actions for violations of minimum sales provisions. Enforcement also implemented a new self-reporting initiative designed to address widespread continuing disclosure violations by municipal bond issuers and underwriters, called the Municipalities Continuing Disclosure Cooperation Initiative. The voluntary initiative has resulted in a large number of self-reports of violations and has brought much-needed attention to disclosure compliance in the municipal securities area.

Office of the Whistleblower

The SEC's whistleblower program established pursuant to the Dodd-Frank Act has significantly contributed to the SEC's receiving a substantial volume of high-quality information about potential securities law violations. The program allows the investigative staff to work more efficiently and permits us to better deploy agency resources. As set forth in our Office of the Whistleblower Annual Report for 2014, the SEC received 3,620 tips from whistleblowers in the U.S. and 55 other countries, a more than 20% increase in the number of tips in two years. In September 2014, the Commission made its largest-ever award (over $30 million) to a whistleblower who provided original information leading to an SEC enforcement action that recovered substantial investor funds. In June 2014, the SEC brought its first anti-retaliation case, charging a hedge fund with engaging in retaliatory practices after learning that the head trader had reported prohibited transaction to the Commission.

Inspection and Examination Program

The Office of Compliance Inspections and Examinations (OCIE) is responsible for the Commission's examination and inspection program. OCIE examines securities firms registered with the Commission, including broker-dealers, municipal securities dealers, SROs, clearing agencies, transfer agents, investment advisers, and investment companies. In addition, the Dodd-Frank Act increased OCIE's responsibilities to include examinations of, among others, municipal advisors, investment advisers to certain private funds, security-based swap dealers, security-based swap data repositories, major security-based swap participants, and securities-based swap execution facilities. The examination program plays a critical role in supporting and enhancing compliance in the securities industry, which also helps to protect investors and the securities markets generally.

OCIE conducts examinations across the country through its National Examination Program (NEP) and utilizes a risk-based approach for selecting which firms, areas, and issues to examine. In FY 2014, OCIE conducted 1,878 examinations of registrants, including 1,150 exams of investment advisers, 493 exams of broker-dealers, 87 exams of investment company complexes, 46 exams of transfer agents, 10 exams of clearing agencies, and seven exams of municipal advisors. The staff also conducted 70 market oversight program inspections and 15 technology controls program inspections.

Innovative Data Analytics and Technology

Over the past several years, OCIE has recruited industry experts to enhance the NEP's technology and data analytics and advance its risk-based examination approach. In FY 2014, OCIE more than doubled the number of highly skilled technologists in its Quantitative Analytics Unit with the addition of eight positions.

In addition, in FY 2014 OCIE's Risk Analysis Examination (RAE) team – which leverages technology to conduct cross-firm reviews involving large quantities of data – collected and analyzed approximately 1.3 billion transactions from 350 firms. Using this data, the RAE team identified a wide range of problematic behavior including, among other things: unsuitable recommendations, misrepresentations, inadequate supervision, churning, and reverse churning.

Enhanced technology has been, and will continue to be, used to enhance the NEP's Anti-Money Laundering (AML) reviews, which now include nuanced assessments of the quality of firms' AML programs. In addition, in 2015 the NEP plans to use its enhanced capabilities in data analytics to assist in detecting indicators of potentially illegal activity, including excessive trading, market manipulation and misconduct by recidivist representatives.

Never-Before Examined Advisers Initiative and Presence Exam Initiative

In 2014, the NEP launched a two-year initiative to engage with the roughly 20% of investment advisers that have been registered for three years or more but never been examined. This initiative includes both risk-assessment and focused reviews. The risk-assessment approach is designed to obtain a better understanding of a registrant and may include a high-level review of an adviser's overall business activities. The focused review approach includes conducting comprehensive, risk-based examinations of one or more higher-risk areas, which could include the compliance program, portfolio management, and safety of client assets.

Throughout 2013 and 2014, Commission staff also conducted focused, risk-based exams of newly registered private fund advisers that registered with the SEC pursuant to the Dodd-Frank Act. These "presence" examinations were more streamlined than typical examinations, and were designed both to engage with the new registrants to inform them of their obligations as registered entities and to permit the Commission to examine a higher percentage of new registrants. Common deficiencies the staff identified in these examinations include: misallocating fees and expenses; charging improper fees to portfolio companies or the funds they manage; disclosing fee monitoring inadequately; and using fictitious service providers to charge false fees in order to kick back part of the fee to the adviser. Ongoing presence exams and continued identification of these types of deficiencies inform the NEP's analysis of new and emerging risks.

Alternative Investment Companies

In 2014, the NEP continued its risk-based examinations of selected registered investment companies offering "alternative" investment strategies with a focus on, among other things, leverage, liquidity and valuation policies and practices; staffing, funding, and governance; and the manner in which funds are marketed to investors. The NEP plans to continue examining these companies in 2015.

Cybersecurity Initiative

In FY 2014, the NEP examined 57 broker-dealers and 49 registered investment advisers to better understand how broker-dealers and advisers are currently addressing the legal, regulatory, and compliance issues associated with cybersecurity. Areas of focus in these examinations included governance and supervision of information technology systems, operational capability, information security, and preparedness for cyber-attacks.

Municipal Advisor Exam Initiative

In 2014, the NEP also launched the municipal advisor examination initiative to conduct focused, risk-based examinations of municipal advisors that were newly registered with the Commission. The focus areas of the examinations, which are still ongoing, include the municipal advisor's books and records responsibilities, compliance with its fiduciary duty to its municipal entity clients, and registration requirements.

Office of Credit Ratings

The Office of Credit Ratings (OCR), which was established by the Dodd-Frank Act, is charged with administering the rules of the Commission with respect to nationally recognized statistical rating organizations (NRSROs), promoting accuracy in credit ratings issued by NRSROs, and helping to ensure that credit ratings are not influenced by conflicts of interest and that NRSROs provide greater disclosure to investors. The Dodd-Frank Act requires OCR to conduct examinations of each NRSRO at least annually[5] and the Commission to make available to the public an annual report summarizing the essential exam findings. The fourth annual report of the staff's examinations was published in December 2014.

The Dodd-Frank Act required that the Commission undertake a number of rulemakings related to NRSROs. In August 2014, the Commission completed its required rulemaking for NRSROs by adopting rules requiring NRSROs to, among other things: (1) report on internal controls; (2) protect against potential conflicts of interest; (3) establish professional standards for credit analysts; (4) publicly provide – along with the publication of a credit rating – disclosure about the credit rating and the methodology used to determine it; and (5) enhance their public disclosures about the performance of their credit ratings. The new rules are intended to strengthen the governance of NRSROs and enhance the transparency of NRSRO activities, thereby promoting greater scrutiny and accountability of NRSROs.

The Dodd-Frank Act also mandated three studies relating to credit ratings: (1) a study on the feasibility and desirability of standardizing credit rating terminology, which was published in September 2012; (2) a study on alternative compensation models for rating structured finance products, which was published in December 2012; and (3) a study on NRSRO independence, which was published in November 2013. In response to the study on alternative compensation models for rating structured finance products, the Commission held a public roundtable in May 2013 to invite discussion regarding, among other things, the courses of action discussed in the report.

Going forward, OCR will continue to focus on completing NRSRO examinations to promote compliance with statutory and Commission requirements, including examining for compliance with the new rules that were adopted in August 2014 as they become effective.

Office of the Investor Advocate

The Office of the Investor Advocate, established by Section 915 of the Dodd-Frank Act, was created in February 2014 with the appointment of Rick Fleming as the SEC's first Investor Advocate. Since its founding, the Office of the Investor Advocate has been working to provide another voice for investors as policies are considered at the Commission, at SROs, and in Congress.

The Office of the Investor Advocate is responsible for identifying problems that investors have with financial service providers and investment products; analyzing the potential impact on investors of proposed regulations and rules; identifying areas in which investors would benefit from changes in SEC regulations or SRO rules; and proposing changes in regulations, legislation, or administration of programs that may mitigate the problems identified.

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[5] OCR's scope for NRSRO examinations includes the eight areas required by the Dodd-Frank Act. Beyond annual risk-based examinations of all registered NRSROs, OCR also conducts special risk-targeted examinations based on credit market issues and to follow up on both tips and NRSRO self-reported incidents.

The Investor Advocate is required to submit two reports to Congress every year. The Report on Objectives, provided in June 2014, sets forth the objectives of the Investor Advocate for FY 2015. The Report on Activities, provided in December 2014, describes the activities of the Investor Advocate during the immediately preceding fiscal year. In addition, the Investor Advocate serves as a member of the SEC Investor Advisory Committee, which is authorized by Section 911 of the Dodd-Frank Act.

In the past year, the Office of the Investor Advocate has grown to six staff members. That staff includes the SEC's first Ombudsman, whom the Investor Advocate appointed in September 2014, fulfilling another statutory mandate.

Office of Minority and Women Inclusion

The Office of Minority and Women Inclusion (OMWI) is responsible for all matters related to diversity in management, employment, and business activities at the SEC. OMWI is charged with developing standards for ensuring equal employment opportunity and diversity in the workforce and senior management of the agency, increasing the participation of minority-owned and women-owned businesses in the agency's contracting, and assessing the diversity policies and practices of entities regulated by the SEC. OMWI must submit an annual report to Congress describing the specific actions OMWI and the SEC have taken to enhance workforce diversity and inclusion and promote supplier diversity, and highlighting the achievements and challenges faced in pursuit of these objectives. The most recent annual report was submitted to Congress in April 2014.

SEC Diversity Efforts

The SEC, with leadership and guidance from OMWI, has implemented a multi-pronged strategy for attaining a diverse and skilled workforce. During fiscal year 2014, OMWI took actions designed to advance the agency's workforce diversity and inclusion efforts. OMWI secured commitments from 18 minority and women professional organizations to collaborate with OMWI on outreach and recruitment to attract a diverse talent pool for current and future employment opportunities at all levels of the agency. OMWI also began using metrics beyond those used previously to evaluate performance under the SEC's strategy for attaining for workforce diversity. In FY 2014, OMWI obtained access to applicant data that will be used to evaluate whether outreach and recruitment efforts are having the desired impact. In addition, OMWI continues to work closely with SEC hiring officials to develop and implement division or office specific diversity initiatives.

Overall, the SEC is making progress towards enhancing diversity in the agency's workforce. In FY 2015, OMWI will continue to engage SEC hiring officials, minority and women professional organizations and educational institutions in the agency's efforts to achieve its workforce diversity objectives.

SEC Programs and Contracts

The OMWI Director also advises the Commission on the impact of the SEC's policies and regulations on minority-owned and women-owned businesses. Of the total $434.2 million the SEC awarded in contracts during FY 2014, $127.4 million (33.9 percent) was awarded to minority-owned and women-owned businesses. The FY 2014 contract awards represented a 58 percent increase over the $92.9 million awarded to minority-owned and women-owned businesses in FY 2013. The SEC continues to look for ways to improve its strategy for promoting supplier diversity. For example, OMWI is in the process of developing an electronic business management system to collect up-to-date business information and capabilities statements from suppliers, particularly minority-owned and women-owned businesses, interested in doing business with the SEC.

The Commission also recently published for comment a proposed contract standard for SEC contracts, which would implement the Dodd-Frank requirement that contractors confirm their commitment to ensuring the fair inclusion of women and minorities in their workforces, and the commitment of their subcontractors to workforce inclusion of minorities and women. On February 13, 2015, the proposed contract standard was published in the Federal Register for a 60-day public comment period. If implemented, the contract standard will be incorporated in all solicitations and contracts for services with a value of $100,000 or more, and any subcontract for services with a value of $100,000 or more awarded for the performance of a covered contract.

Practices of Regulated Entities

At the beginning of FY 2014, the SEC, together with various other federal financial agencies, published in the Federal Register for public comment their Proposed Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies. The proposal set forth standards covering four areas: 1) organizational commitment to diversity and inclusion; 2) workforce profile and employment practices; 3) procurement and business practices and supplier diversity; and 4) practices to promote transparency of organizational diversity and inclusion. To date, more than 200 comments have been received in response to the proposal. The SEC and the other federal financial agencies are working to complete the final Policy Statement.

Office of Municipal Securities

The Office of Municipal Securities (OMS) administers the Commission's rules pertaining to municipal securities broker-dealers, municipal advisors, investors in municipal securities, and municipal issuers and coordinates with the MSRB on rulemaking and enforcement actions. OMS also advises the Commission and other SEC offices on policy matters, enforcement, and other issues affecting the municipal securities market. In addition, OMS serves as the Commission's liaison to the MSRB, FINRA, the Internal Revenue Service Office of Tax-Exempt Bonds, and various industry groups and regulators on municipal securities issues.

In September 2013, pursuant to Section 975 of the Dodd-Frank Act, the Commission adopted final rules for the registration of "municipal advisors" with the SEC. The new registration requirements and regulatory standards aim to address problems observed with the conduct of some municipal advisors, including failure to place the duty of loyalty to their municipal entity client ahead of their own interests, undisclosed conflicts of interest, advice rendered by financial advisors without adequate training or qualifications, and "pay to play" practices. Municipal advisors were required to comply with the final rules as of July 1, 2014 and to register with the SEC using the final registration forms during a four-month phased-in compliance period, which began on July 1, 2014.

Over the next year, OMS will continue to devote significant attention to administering these final rules, to reviewing rule filings by the MSRB related to municipal advisor regulation, and to coordinating with SEC examination staff in their examinations of municipal advisors. OMS will also continue to provide ongoing legal advice and technical support to the Enforcement Division on enforcement matters in the municipal securities area.

Office of International Affairs

The Office of International Affairs (OIA) develops and implements strategies to further SEC interests in the regulation and oversight of cross-border securities activities, advances cross-border enforcement and supervisory cooperation, and provides technical assistance to strengthen global financial markets.

In the regulatory policy sphere, OIA coordinates the SEC staff's engagement in multilateral organizations, including the International Organization of Securities Commissions (IOSCO) and the Financial Stability Board, as well as cross-sectoral work that IOSCO does jointly with other standard-setting bodies such as the Committee on Payments and Market Infrastructures and the Basel Committee on Banking Supervision. This past year, SEC staff led or participated in a wide array of international policy workstreams, including work related to the OTC derivatives markets, financial market infrastructures, market-based financing, and the identification of tools for the regulation of cross-border entities. In addition, OIA manages the SEC staff's bilateral dialogues with foreign regulatory counterparts, during which it seeks to identify risks in the cross-border securities markets and to share regulatory concerns with the agency.

OIA also advises the Commission and staff on the implementation of SEC initiatives that have an impact beyond the United States, and on foreign and global initiatives that may impact the agency, the U.S. market, and U.S. market participants.

In addition, OIA assists the SEC's Division of Enforcement on cross-border investigations and litigation, in particular by: (1) informing Enforcement Division strategy when parties, evidence, or assets are located abroad; (2) obtaining foreign evidence and information for enforcement matters; and (3) securing and repatriating illegally obtained proceeds. Working with Enforcement staff, OIA also obtains witness statements, documents, and other information located in the U.S. on behalf of foreign counterparts, as assisting foreign counterparts enhances the SEC's ability to obtain reciprocal cooperation.

OIA also assists SEC staff on cross-border supervisory issues related to the registration and oversight of foreign entities and examinations of SEC registrants located abroad, and responds to requests for assistance in supervisory matters from foreign counterparts. OIA also negotiates and implements supervisory memoranda of understanding (MOUs) and other arrangements with foreign regulatory authorities to enhance oversight of cross-border regulated entities through consultation, cooperation, and the exchange of information. Most recently, the SEC concluded 29 MOUs with European regulators related to cross-border asset management.

Office of the Chief Accountant

The Commission's Office of the Chief Accountant, which serves as the principal adviser to the Commission on accounting and auditing matters, oversees the Financial Accounting Standards Board's (FASB) process for setting accounting standards for public companies, and the Public Company Accounting Oversight Board (PCAOB), which oversees the audits of public companies. The Commission also plays an important role in connection with International Financial Reporting Standards (IFRS), which foreign private issuers can use in their filings with the Commission, including through interaction with the International Accounting Standards Board (IASB) and the Commission's participation on the IFRS Foundation Monitoring Board.

Commission staff continued in fiscal year 2014 to monitor and support the activities of the FASB and the IASB as they made progress in their efforts to converge U.S. GAAP and IFRS. Commission staff reviews these and all major standard-setting and interpretive efforts of the FASB and the IASB to ensure the appropriateness of accounting standards used by issuers in U.S. markets.

The Commission's oversight over the PCAOB includes appointing board members, approving PCAOB rules, reviewing PCAOB disciplinary actions and disputes regarding inspection reports, and approving the PCAOB's budget and accounting support fee. The PCAOB has an active standard-setting agenda, including projects to update numerous standards that address important aspects of the performance of audits and a project to consider changes to the content of the auditor's report on a company's financial statements. In addition, the PCAOB is expanding its interim program of inspecting broker dealer audits while it develops a permanent inspection program.

Office of Investor Education and Advocacy

The Office of Investor Education and Advocacy (OIEA) seeks to provide individual investors with the information they need to avoid fraud and make sound decisions concerning investments in the securities markets. OIEA advances this mission by communicating daily with investors, responding to their complaints and inquiries, and providing educational programs and materials.

During fiscal year 2014, OIEA processed over 21,000 complaints, questions, and other contacts from investors, and published 28 investor alerts and bulletins, the most ever in a single year, to educate investors. The alerts and bulletins covered a wide variety of topics, warning investors of investment scams such as fraudulent unregistered offerings, schemes involving virtual currencies, and affinity fraud. The alerts also helped educate the public on a variety of investment and securities-related topics, including by providing information concerning credit ratings, the Investment Adviser Public Disclosure database, the effect of fees on investment returns, and account transfers.

Internal Operations

The Office of the Chief Operating Officer (OCOO) leads and coordinates the activities of the Offices of Acquisitions, Financial Management, Human Resources, Information Technology, and Support Operations. Committed to maximizing agency effectiveness in pursuit of its mission and concentrating resources in mission-critical functions, OCOO works continuously to streamline back office operations, observe effective financial controls, upgrade information systems and leverage human capital.

The SEC continues to place a high priority on allocating its resources efficiently and effectively. Last year, for example, OCOO implemented changes in the acquisitions process and internal restructurings that will allow tens of millions of dollars to be shifted to front-line operations. To keep up with a market in which thousands of trades can be executed – and thousands of records generated – in a single second, the SEC implemented IT upgrades that allow investigators to sift through unprecedented quantities of data to discover suspicious patterns and connections.

Internal controls are also a priority, and for the fourth consecutive year, the General Accountability Office found no material weaknesses in the SEC's financial reporting. The SEC is building on this performance by developing its Operational Risk program and enhancing cross-organizational processes to support the division and office management assurance statements.

The SEC also has continued its efforts to improve other internal areas, including making significant investments in data and systems security to enhance our monitoring capabilities and streamlining our human resources processes to help save time and money.

Efficiencies and Advances using Technology

Investment in technology continues to be one of the SEC's highest priorities. In FY 2016, the SEC plans to build on the substantial progress made with its "Working Smarter" initiative that has led to better services and improved business productivity for employees, investors, companies, and the public. Significant progress has been made, and we remain focused on the following areas:

- Expanding data analytics to intake and analyze voluminous market data;
- Building out of high-computing platforms to support analytical models, complex computations, and algorithms;

- Improving risk assessment and surveillance tools to help staff monitor for trends and emerging fraud risks;

- Further automating information security controls, continuing the transition to a posture of continuous monitoring, and building the agency's risk management capabilities; and

- Enhancing the infrastructure to support data sharing that will lower costs and improve the overall accuracy of information.

In addition, the SEC continues to achieve benefits and efficiencies from the virtualization and consolidation of its data centers, expansion of its use of the public cloud, and other technical infrastructure enhancements.

Fiscal Year 2016 Budget Request

To fulfill its mission, the SEC must keep pace with the growing size and complexity of the U.S. securities markets and of the entities within our broad jurisdiction. The securities markets are high-speed and constantly evolving, and the industries within our jurisdiction are by no means static. In the last decade, trading volume in the equity markets has more than doubled, as have assets under management by investment advisers. At the same time, the agency's responsibilities have dramatically increased, with new or expanded jurisdiction over securities-based derivatives, hedge fund and other private fund advisers, credit rating agencies, municipal advisors, and clearing agencies, as well as a requirement to implement a new regime for crowdfunding offerings, among other changes.

The SEC's FY 2016 budget request – all of which would be fully offset by matching collections of very nominal fees on securities transactions and will not increase the Federal budget deficit or take funds away from other agencies – seeks to directly address the growing size and complexity of the markets and entities within our jurisdiction.

The SEC is requesting $1.722 billion for FY 2016. If enacted, this request would permit the agency to add 431 new staff positions, which are needed both to improve core operations and implement the agency's new responsibilities. These new positions primarily would be dedicated to the following key areas:

- Bolstering examination coverage for investment advisers;
- Focusing on economic risk analysis to support rulemaking and oversight;

- Meeting our expanded responsibilities for overseeing the securities markets and key participants in those markets; and

- Strengthening our core enforcement functions to detect, investigate, and prosecute wrongdoing.

The SEC's FY 2016 budget request continues our efforts to leverage technology to improve agency programs, including through full use of the SEC Reserve Fund. Key information technology initiatives include continuing:

- Investments in data analytics to help ferret out wrongdoing, identify risks, and inform rulemaking;
- Modernization of EDGAR and SEC.gov, to simplify the financial reporting process, reduce filer burden, and make our widely used website more informative, user-friendly, and secure;
- Deployment of systems to make key business processes more efficient and effective, particularly in enforcement and examinations; and
- Focus on IT security to further automate controls and continue building a continuous monitoring program.

Conclusion

Thank you for your support for the agency's mission and for inviting me to be here today to discuss the work and many ongoing initiatives of the SEC. Your continued support will allow us to better protect investors and facilitate capital formation, more effectively oversee the markets and entities we regulate, and build upon the significant progress we have made to date.

I am happy to answer any questions you may have.

Congress of the United States
Washington, DC 20515

March 17, 2015

The Honorable Mary Jo White
Chair
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Dear Chair White:

We write to urge the Securities and Exchange Commission (SEC) to move quickly to finalize rules implementing section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Wall Street Reform Act"). This section requires publicly traded companies to disclose the ratio of the compensation of their CEOs to the compensation of their median worker. We were supportive of the SEC's proposed rule to implement section 953(b) believing it reflects the legislative intent of the statute and effectively addresses any concerns regarding compliance costs.

As the Wall Street Reform Act was enacted more than four years ago, we believe it's long past the time for the SEC to finalize this rule. Boards of directors, investors, and other stakeholders need this information to better understand and assess CEO compensation. CEO pay must be analyzed within the context of a comparison with the median employee pay at each firm. Disclosure of this information will help investors evaluate the reasonableness of CEO pay levels relative to other company employees when casting "say-on-pay" advisory votes as is required by the Wall Street Reform Act.

Research shows the higher the CEO to median worker pay ratio, the more likely that CEO is to pursue the kind of risky investments that brought on the global financial crisis. The Institute for Policy Studies found that nearly 40 percent of the highest-paid CEOs were fired, sought a bailout, or forced to pay fraud-related fines. Furthermore, a lower ratio of CEO to median worker pay implies more investment in human capital and a longer-term outlook. According to the Center for Audit Quality's annual investor survey, 46 percent of investors say they consider CEO compensation in their decision making.

Congress enacted the CEO-to-worker pay ratio disclosure rule in response to public concern over high executive compensation and the need to have this information available in an understandable format. The CEO of a S&P 500 company makes, on average, $331 for every $1 earned by the typical rank-and-file worker. In some companies, this ratio can reach as high as $1,000 to $1. Investors should be able to consider if a CEO provides hundreds of times the value of their employees prior to investing in a firm. While executives make critical decisions about the direction of their companies, quality employees ensure those decisions are properly implemented. This information will allow investors to ascertain whether company employees are fairly compensated.

The current culture of paying CEOs hundreds of times more than the typical employees hurts working families, is detrimental to employee morale, and goes against what research shows is best for business. Management expert Peter Drucker argued that a pay ratio not exceeding 20-to-1 or 25-to-1 is ideal, and that higher pay ratios make it difficult to foster the kind of teamwork and trust that businesses need to succeed. Today's numbers dwarf that optimal ratio, contributing to stunning widening of economic inequality – 95 percent in income gains since the global financial crisis have gone to the top 1 percent while ordinary workers' pay has stagnated.

We urge the SEC to finalize its strong proposed rule in early 2015. The rule provides flexibility to firms to enable their compliance with the law without exemptions that undermines the intent of the law. Thank you for your attention to this matter and your prompt reply.

Sincerely,

Keith Ellison Member of Congress	Raúl M. Grijalva Member of Congress	Maxine Waters Member of Congress
Mark Pocan Member of Congress	Barbara Lee Member of Congress	Jan Schakowsky Member of Congress
Stephen F. Lynch Member of Congress	Michael Capuano Member of Congress	Jared Huffman Member of Congress
Eleanor Holmes Norton Member of Congress	Marcy Kaptur Member of Congress	Jim McDermott Member of Congress
John Conyers, Jr. Member of Congress	Paul D. Tonko Member of Congress	Alcee L. Hastings Member of Congress

Chris Van Hollen
Member of Congress

James P. McGovern
Member of Congress

Peter Welch
Member of Congress

Bonnie Watson Coleman
Member of Congress

Rosa L. DeLauro
Member of Congress

Louise M. Slaughter
Member of Congress

Charles B. Rangel
Member of Congress

Elijah E. Cummings
Member of Congress

Julia Brownley
Member of Congress

Katherine Clark
Member of Congress

Judy Chu
Member of Congress

John P. Sarbanes
Member of Congress

Steve Cohen
Member of Congress

Peter DeFazio
Member of Congress

John Yarmuth
Member of Congress

Mark Takano
Member of Congress

Robert C. "Bobby" Scott
Member of Congress

Zoe Lofgren
Member of Congress

Mark DeSaulnier
Member of Congress

Gwen Moore
Member of Congress

David N. Cicilline
Member of Congress

Jackie Speier
Member of Congress

Rubén Hinojosa
Member of Congress

Michael M. Honda
Member of Congress

John Garamendi
Member of Congress

Donald S. Beyer, Jr.
Member of Congress

Tim Walz
Member of Congress

Frederica S. Wilson
Member of Congress

Peter J. Visclosky
Member of Congress

James R. Langevin
Member of Congress

Henry C. "Hank" Johnson, Jr.
Member of Congress

Chellie Pingree
Member of Congress

Betty McCollum
Member of Congress

Niki Tsongas
Member of Congress

Frank Pallone, Jr.
Member of Congress

Luis V. Gutiérrez
Member of Congress

Michelle Lujan Grisham
Member of Congress

Al Green
Member of Congress

Adam Smith
Member of Congress

Stacey E. Plaskett
Member of Congress

Mike Thompson
Member of Congress

Doris O. Matsui
Member of Congress

Richard M. Nolan
Member of Congress

U.S House of Representatives Committee on Financial Services Hearing "Examining the SEC's Agenda, Operations, and FY 2016 Budget Request"
March 24, 2015

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Rep. Fincher

1. **Over the last several years, the Securities and Exchange Commission has adopted a "risk-based" approach across its National Exam Program to improve the SEC's oversight of self-regulatory organizations, investment advisers, and broker-dealers. Given the apparent success of this risk-based approach and the flexibility that it grants the SEC to ensure the best use of examination resources, does or should the SEC's Office of Credit Ratings also apply a risk-based approach to the annual exams of credit rating agencies, as required under Title IX of the Dodd-Frank Act?**

   Response: The Office of Credit Ratings (OCR) applies a risk-based approach to the annual examinations of credit rating agencies. Similar to the National Exam Program of the Office of Compliance Inspections and Examinations, the risk-based approach to the annual examinations provides OCR with the flexibility to ensure the best use of examination resources.

   Title IX of the Dodd-Frank Act requires OCR to conduct an examination of each nationally recognized statistical rating organization (NRSRO) at least annually, covering the following eight specific review areas:

   - Whether the NRSRO conducts business in accordance with its policies, procedures, and rating methodologies;
   - The management of conflicts of interest by the NRSRO;
   - The implementation of ethics policies by the NRSRO;
   - The internal supervisory controls of the NRSRO;
   - The governance of the NRSRO;
   - The activities of the designated compliance officer of the NRSRO;
   - The processing of complaints by the NRSRO; and
   - The policies of the NRSRO governing the post-employment activities of its former personnel.

   In planning the scope for the annual examination for each NRSRO, OCR performs a risk assessment within these eight review areas, identifying specific risks for each NRSRO. As a result, the examination of each NRSRO covers all required review areas while being tailored to the specific risk profile of each NRSRO. The individualized risk assessments take into account a number of factors, including the NRSRO's credit rating activities and operations, the Staff's findings and other observations from prior examinations, the impact of an internal control or compliance failure by the NRSRO, recent industry developments affecting NRSROs and the asset classes in which the NRSRO is registered, the NRSRO's filings with the SEC and public disclosures, and relevant tips, complaints, and referrals received by the Commission.

In addition to employing a risk-based approach when reviewing the 8 mandated areas during examinations, OCR also targets high-risk areas that are relevant for particular NRSROS. For example, as noted in the *2014 Summary Report of Commission Staff's Examinations of Each Nationally Recognized Statistical Rating Organization* (available at http://www.sec.gov/ocr/reportspubs/special-studies/nrsro-summary-report-2014.pdf), the annual examinations conducted last year also included a review of the following risk-targeted areas that were determined to be relevant for particular NRSROs:

- Written policies and procedures, controls and documentation related to information technology and cybersecurity;
- Ratings activity or rating files related to government securities;
- Ratings-related activities and publications concerning certain new types of asset-backed securities; and
- Operations and rating activity by certain foreign credit rating affiliates of the NRSROs.

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Rep. Heck

I welcome the Chair's announcement that the SEC should act to harmonize the legal duties owed to investors by different types of investment counselors. However, I also want to encourage the SEC to think through the second-order effects. The Council of Economic Advisers' report on investment advice praises an advice model that looks a lot like our Registered Investment Advisor. Obviously, there are more differences between RIAs and other investment counselors than just the legal duty to investors. Do you have concerns that harmonizing the duty to investors would lead to homogenization of business models for investment advice and/or a reduction in the availability of advice from RIAs?

Response: I believe that broker-dealers and investment advisers should be subject to a uniform fiduciary standard of conduct when providing personalized investment advice to retail investors. In advancing such a proposal, there are many questions that would need to be addressed in proposing a uniform fiduciary standard, including how to define the standard with clear guidance on what it would require and how it would impact current business practices.

I recognize that implementation of a uniform fiduciary standard must consider the potential economic and market impacts, including consequences that may result for investors and market participants. Any action we take in this area should take into account related concerns, such as a potential reduction in availability of advice or services. It is important that the Commission strike the right balance in addressing these issues while making sure investors, particularly retail investors, are appropriately protected and have access to the type of investment advice they need and can afford.

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Rep. Huizenga

M&A Brokers

Background: The SEC Division of Trading and Markets staff issued the M&A Broker no-action letter dated January 31, 2014 [Revised: February 4, 2014] ("M&A Broker Letter") providing merger and acquisition ("M&A") brokers (as defined in the letter) with relief from broker-dealer registration under Section 15 of the Securities Exchange Act of 1934, as amended, based on the facts and circumstances described in the letter and subject to its specified conditions, limitations, and investor protections.

Question: May the M&A Broker Letter be understood to reflect the staff's judgment that the activities described in the letter, subject to the stated conditions, limitations, and investor protections, do not warrant broker-dealer registration and the resulting direct regulatory oversight of the covered activities from the SEC and FINRA?

Response: The M&A Broker Letter reflects the staff's determination not to recommend enforcement action if an M&A broker, as defined in the letter, and subject to certain conditions, does not register with the SEC or become a member of FINRA. The letter's conditions include that the M&A Broker not hold customer funds or securities and not be barred or suspended from association with a broker-dealer. This determination is based, in part, on the limited scope and particular nature of the services to be provided by an M&A broker.

As a general matter, opinions expressed by members of the staff do not constitute an official expression of the Commission's views. The staff's interpretive position in the no-action letter is limited to the question of registration under Section 15(a) of the Exchange Act and does not address any other provision of the federal securities laws, including the anti-fraud provisions of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Question: Does the M&A Broker Letter reflect the staff's judgment that, in view of the specified conditions, limitations, and investor protections, the SEC's and FINRA's regulatory resources may be more cost-effectively allocated to other regulatory priorities?

Response: The staff's views are based on its analysis of the particular facts and circumstances involved, including the specified conditions, limitations, and investor protections, in the context of Section 15 of the Exchange Act. The letter should not be read as an assessment concerning current or future allocation of the SEC's or FINRA's regulatory resources or priorities.

Question: The M&A Broker Letter does not limit the size of the privately-owned businesses for which the no-action relief is available. Does the absence of a size limitation among the letter's stated conditions, limitations, and investor protections reflect the staff's judgment that the size of a privately owned business is not a particular investor protection concern in granting the no-action relief?

<u>Response</u>: The M&A Broker Letter focuses on the services to be provided by the intermediary and the nature of the underlying transaction, but does not address the size of the businesses for which no-action relief is available. Like the M&A Broker Letter, the staff issued an earlier no-action letter which did not impose a limitation on the size of the business.[1]

Question: Generally speaking, how does the Commission view staff no-action letters? Is the M&A Broker letter legally binding on the Commission, the Enforcement Division, or the Trading and Markets Division? Could the letter be subsequently modified or withdrawn by the Commission or by the staff of the Division of Trading and Markets?

<u>Response</u>: Opinions expressed by members of the staff of the Division of Trading and Markets do not constitute an official expression of the Commission's views and do not bind the Commission or other Divisions. A no-action letter, by its terms, is limited to the facts and circumstances described in the request, and may be modified or withdrawn by the Commission or the staff.

<u>Conflict Minerals</u>

Question: Chair White, you have questioned whether SEC disclosure powers are best used to meet address societal ills, noting in an October 2013 speech that "other mandates, which invoke the Commission's mandatory disclosure powers, seem more directed at exerting societal pressure on companies to change behavior, rather than to disclose financial information that primarily informs investment decisions. That is not to say that the goals of such mandates are not laudable. Indeed, most are. Seeking to improve safety in mines for workers or to end horrible human rights atrocities in the Democratic Republic of the Congo are compelling objectives, which, as a citizen, I wholeheartedly share. But, as the Chair of the SEC, I must question, as a policy matter, using the federal securities laws and the SEC's powers of mandatory disclosure to accomplish these goals."

As you know, the SEC has little or no experience in crafting trade sanctions or articulating and enforcing human rights policy, two areas which have not traditionally been within the purview of securities regulation. Chair White, you have questioned whether the federal securities laws and the SEC's powers of mandatory disclosure should be used to help counter human rights abuses or further other altruistic causes.

[1] *See* Letter from Edward L. Pittman, Attorney, Office of Chief Counsel, Division of Market Regulation, to Bobby J. Johns, Vice President, International Business Exchange Corporation, dated Dec. 12, 1986 (granting conditional no-action relief to a business broker without limitation as to the size of the issuer).

In light of the President's FY2016 budget request of $1.722 billion for the SEC, I, along with Chairman Hensarling, Chairman Royce, and Subcommittee Chairman Garrett sent you letter asking for a detailed description of the funds and hours expended to date on the SEC's conflict minerals disclosure rule. You response stated that from July 2010 to date, the SEC has spent over 21,000 hours and approximately $2.7 million on this particular provision which you agree, the SEC has little to no experience with. From your perspective, should the SEC and federal securities laws be used to help counter human rights abuse or further other altruistic causes? Is this truly a wise use of resources on an issue that you have admitted, the SEC has no expertise with? Additionally, what is the cost to the investors when there is an overemphasis on mandatory disclosure requirements that seem to be targeting societal ills, rather than what may be considered "material" by a company?

<u>Response</u>: As you know, the Commission adopted the Conflict Minerals rule pursuant to a Congressional mandate in Section 1502 of the Dodd-Frank Act. When Congress and the President enact a statute directing an agency to undertake rulemaking, the agency cannot ignore that mandate. The agency's role is to carry out the statutory mandate by writing a rule that comports with its understanding of the statutory purpose and consistent with other applicable legal requirements. While I have questioned, as a matter of policy, certain uses of the federal securities laws and the Commission's powers of mandatory disclosure, when the agency is given a rulemaking mandate it must fulfill the obligation.

<u>Pay Ratio</u>

Background: The SEC is expected to finalize its "pay ratio" rulemaking (required under 953(b) of Dodd-Frank) sometime this year. This rule requires that public companies disclose the ratio between their CEO and the median employee. This is a politically-charged rulemaking that will not provide investors with any kind of decision-useful information.

Question: Do you expect that the SEC will issue a final "pay-ratio" rule in 2015?

<u>Response</u>: On August 5, 2015, the Commission carried out Section 953(b)'s statutory mandate by adopting a final rule that requires a public company to disclose the ratio of the compensation of its chief executive officer (CEO) to the median compensation of its employees.

Question: As you know, last April a US Court of Appeals found that the SEC's conflict minerals rule violated the First Amendment because it required companies to shame themselves. Given the political and shaming nature of the pay-ratio rule, is it not reasonable to assume that the pay ratio rule will likely also violate the First Amendment?

<u>Response</u>: We are mindful of the Court's earlier conflict minerals decision and are carefully reviewing the Court's recent opinion on a panel rehearing. The Commission does not believe, however, that the pay ratio disclosure that Congress has mandated is inconsistent with the First Amendment. Based on principles of statutory construction, and consistent with

comments on the proposed rule, the Commission concluded that Congress intended the disclosure to provide shareholders with information that would be useful in making their say-on-pay votes. The rule is carefully tailored to further that important government interest by providing a company-specific metric that is relevant and useful to shareholders' say-on-pay voting. Accordingly, the Commission believes that the disclosure fits comfortably within the class of securities law disclosures that have been deemed to be consistent with the First Amendment.

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Rep. Luetkemeyer

1. **It has come to my attention that a number of broker dealers have been told by their bank counterparties that the use of Special Reserve Accounts will be curtailed or discontinued due to the new capital requirements applicable to banks with $50 billion or more in assets. It appears that it will be difficult to find sufficient capacity for these customer assets, particularly those that are held by business entities. Has the SEC or FINRA reviewed the implications of the enhanced capital requirements on the industry's ability to comply with securities laws, including Rule 15c3-3? Do the available alternatives present new risks or new burdens on the broker-dealers?**

   Response: Under Rule 15c3-3, broker-dealers must determine the net amount of cash they owe to their customers and based on that determination maintain a reserve of funds or U.S. government securities in a special account for the benefit of their customers. The objective of the rule is to segregate customer assets from the broker-dealer's proprietary activities. Thus, the rule limits broker-dealers to only using cash or government securities to meet reserve requirements so they do not speculate or otherwise use customer cash. A small number of broker-dealers have notified FINRA that they have had to move their customer reserve cash deposits. Some of these firms are increasing their use of U.S. government securities (as opposed to cash deposits) to meet the reserve requirements, either through owning the securities outright or engaging in repurchase transactions. Others are diversifying their cash deposits into several different banks (the rule limits the amount of cash that can be deposited into a single bank based on the size of the bank). Using government securities as opposed to cash deposits and diversifying cash deposits among several banks do not present any new risks and are consistent with practices by broker-dealers over many years, though there may be some operational burdens for smaller broker-dealers. I understand from the staff that no broker-dealer has been unable to meet its responsibilities under Rule 15c3-3 as a result of the activities of the banks.

   Finally, it should be noted that some broker-dealers "sweep" cash held in their customers' securities accounts into bank deposit products or money market funds. This reduces the cash they hold for customers and, consequently, reduces the amount of cash owed to customers that must be accounted for in determining reserve requirements.

2. **You testified that the Department of Labor (DOL) and the SEC are two separate agencies with separate mandates. If the SEC and DOL put out different fiduciary rules that conflict with one another, how do you suggest the marketplace navigate those conflicts?**

3. **As I understand it, the accounts and advisers supervised by DOL would be subject to any rules issued by the SEC, but the reverse is not true with respect to non-retirement accounts/advisors not subject to a DOL rule. How will those DOL-supervised accounts and advisers subject to both rules operate if the DOL and SEC rules are different? How does that clear up confusion and provide a better service to investors?**

Response: I believe that broker-dealers and investment advisers should be subject to a uniform fiduciary standard of conduct when providing personalized investment advice to retail investors. SEC staff is developing recommendations for imposing a uniform fiduciary standard and a program of third-party examinations for investment advisers, and I am exploring the related considerations with my fellow Commissioners.

As separate and distinct agencies, I believe that there is no reason why the SEC – if it chooses to advance a proposal – and the DOL cannot each proceed independently. I also understand, however, the importance of consistency and considering the impact that potential fiduciary rulemaking by the SEC and the DOL may have on SEC registrants. Consultation among the two agencies has been, and will continue to be important.

SEC staff provided DOL staff with technical assistance and expertise on the SEC's regulatory regime as DOL developed their re-proposal. SEC staff also shared its experience with how services are provided in this area of the market. I expect SEC staff to continue to provide technical assistance to DOL as they pursue their fiduciary rulemaking. And consulting with DOL staff will be important as the SEC evaluates in advancing its own proposal.

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Rep. Messer

According to a recent EBRI study, worker savings remain low, and only a minority of Americans appear to be taking basic steps to prepare for retirement. However, 90 percent of Baby Boomers who own annuities believe they are doing a good job preparing financially for retirement.

Proposing a variable annuity summary prospectus rule has been on the SEC's list of top priorities for years. More than six years ago former Chair Mary Schapiro voiced support for the development of the rule. More recently, in June 2013, the SEC said the rule is one of the Division's top four priorities among over 70 ongoing projects, and you yourself have expressed support for the rulemaking in addition to other SEC commissioners.

Consumers like having a summary prospectus for mutual funds, and they would like a streamlined and concise disclosure for variable annuities as well so they can better understand their investment choices and lead to more informed decision making. In fact, according to a study conducted by the Insured Retirement Institute, 95 percent of investors agreed, "I would prefer to receive a shorter paper summary prospectus instead of a 150 – 300 page full prospectus containing the full details, if details are available online or upon request."

Although the SEC's regulatory agenda continues to list the VA summary prospectus as a top priority, its release continues to be delayed. Can my constituents expect the SEC to finally act on this rulemaking in 2015? If not this year, what is holding up the rulemaking?

Response: The Division of Investment Management has been developing a rulemaking recommendation designed to provide variable annuity investors with more user-friendly disclosure and to improve and streamline the delivery of information about variable annuities through increased use of the Internet and other electronic means of delivery. The mutual fund summary prospectus, adopted in 2009, may offer a useful model for variable annuity disclosure.

I am strongly supportive of more user-friendly disclosure about these products that are sold to seniors and others who are seeking ways to fund their retirement. While it is important to move forward, we also need to balance this project with the demands of our mandatory rulemaking agenda and implementation of the Dodd-Frank Act and the JOBS Act, as well as other important rulemaking initiatives (including enhancements to market structure and disclosure effectiveness and addressing risks in the asset management industry).

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Rep. Moore

The SEC has a 270-day statutory deadline to release final rules for Section 1504 of the Dodd-Frank Act, but it has been over 20 months since the United States District Court for the District of Columbia vacated the August 2012 rule, and returned it to the SEC to be rewritten. Despite the congressionally mandated deadline to produce a rule, the SEC has not set a *definitive* timeline for when a final rule will be produced. The start of a rulemaking was initially scheduled for March 2015, but was then pushed to October 2015, with no explanation for the delay. Investors with assets of over $6 trillion have written to the SEC asking for final rules to be released as soon as possible. Additionally, last year, 13 Senators and 58 Representatives, as well as over 500 civil society organizations from around the world, wrote to the SEC asking for a swift rulemaking.

Canada, the European Union's 28-member states, and Norway have adopted, and in some cases already begun to implement, similar laws. In fact, on March 19th, Norway's Statoil released its first report of extractive payments to governments. The SEC has already finished much of the work on this important rule, and it is time to take it across the finish line. The U.S. Department of State and White House have made this a foreign policy priority, and we need leadership from the SEC to match that of the rest of the U.S. government on this issue.

Would you please tell me when this year the final rule for Section 1504 will be completed?

Response: I appreciate that there is great interest in this rulemaking and in the Commission completing it as soon as possible. The staff is currently in the process of preparing a draft proposing release for the Commission's consideration. Once the Commission approves a proposal, an appropriate period for public comment would follow. The staff and Commission would consider the comments received when developing final rules.

While we are moving forward expeditiously with this rulemaking, I cannot presently provide a specific timeframe for completing the rules given, among other considerations, the uncertainty about the period needed to assess the public comments that the Commission is likely to receive once it issues the proposal and for the staff to prepare a final release for Commission consideration. In addition, we will need to continue to balance the time and workload demands of this new, second rulemaking effort with the many other rulemakings that the Commission is undertaking, many of which are also statutorily mandated.

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Rep. Royce

At a recent speech at Tulane University, you mentioned a "recent takeover bid" where "we saw a unique pairing of a strategic bidder and an activist hedge fund."

As you know, I have raised questions about this unique bid. Specifically, last May, I said that the "proposed merger has also raised questions about the efficacy of the 10-day rule outlined in Schedule 13D. In an age where Regulation FD can be complied with by announcing key information via social media, the 10-day length for disclosure is clearly anachronistic. Taking into account technological advancements, there are good public policy reasons for the SEC to again revisit this rule and shorten the window that investors have to disclose stakes of 5% or more in a target company."

As you know, Section 929R of the Dodd-Frank Act gives the SEC the authority to shorten the 10-day filing period, which former SEC Chair Schapiro called a "a perfect candidate for modernization and rethinking."

Can you comment on whether the Commission is looking at any future actions that could bring clarity to some of the issues raised by this bid, including the 10-day rule, so-called "shareholder referendums" or the definition of co-bidder or "co-offering person" for purposes of insider-trading rules?

Response: 10-day Rule

The 10-day reporting period is an area of Section 13(d) that has drawn considerable public attention, with vocal supporters of both the current period and a shorter period.

Some observers have expressed concern that 10 days is too long to wait for an investor to disclose its 5% position in a company's shares, particularly since it can continue to acquire shares after crossing the 5% threshold. Concerns also have been raised that, in certain instances, an investor may share information about its investment strategies with other select investors before and during the 10-day reporting window. Some have advocated for a "cooling-off period" after a holder reaches the 5% threshold during which no additional purchases of shares can be made.

Other observers, including some large institutional investors, asset managers and activists, have said that the 10-day reporting period is appropriate and that any modernization effort of Section 13(d) should not focus solely on a review of the reporting deadline. They believe it also should consider the changes to the corporate governance landscape since the enactment of the Williams Act in 1968, including the implementation of corporate defense mechanisms such as the "poison pill." Others believe strongly that the Commission should not shorten the reporting period because a shorter deadline would discourage sizable investments and therefore limit the number of influential positions that might benefit all shareholders.

As you highlight, the Dodd-Frank Act gave the Commission the discretionary authority to shorten the deadline for initial Schedule 13D filings. The Commission currently is considering numerous rules, including those required by the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Jumpstart Our Business Startups Act, and we remain committed to completing the rulemakings that remain. As a result, the most recent Regulatory Flexibility Act agenda published continues to focus largely on these Congressional mandates, while also including certain additional significant areas of focus, such as potential enhancements to U.S. equity market structure and possible improvements to risk monitoring and regulatory safeguards in the asset management industry. The staff continues to follow developments in the marketplace and is keeping itself informed about the current debate about the beneficial ownership reporting rules and the possible changes that could be made.

Shareholder Referendums

In this context, a shareholder referendum refers to a shareholder vote on a particular matter at a meeting called in a manner not provided for in the company's bylaws. Generally, the results of such a vote would be non-binding and advisory in nature.

Some have expressed concern that allowing a shareholder to file communications relating to a shareholder referendum as soliciting materials under the Commission's proxy rules lends such materials a form of official imprimatur or creates the impression that such a vote is being conducted in the ordinary course of a shareholder meeting pursuant to the company's bylaws and in accordance with relevant state law. The federal securities laws do not address whether shareholders can hold shareholder referendums. Rather, it is state law and a company's corporate governance documents that provide the rules for shareholder meetings and specify what are proper matters for shareholder action. Whether a shareholder referendum is a form of proper corporate action under state law is a question best left to state legislatures and the courts.

The SEC's concern in these matters is that shareholders receive the disclosure they need to make an informed voting decision. If a shareholder files a proxy statement in connection with a shareholder referendum, the SEC staff will screen and potentially review the filing to ensure that the filing complies with the applicable rules and that shareholders are provided with timely, complete, and accurate material information. The staff has a longstanding practice of accepting and reviewing filings, even if it is unclear whether a filing is technically required under our rules. Whenever a filing is made, we expect it to fully comply with the applicable disclosure requirements, and filers assume potential liability under the federal securities laws. I believe this process benefits shareholders and is better than the alternative, where the referendum would take place without public disclosure, any SEC staff oversight, and the protection of our rules. The staff will continue to monitor any developments relating to the use of shareholder referendums.

Co-bidder/Co-offering

When an "offering person" has taken a substantial step to commence a tender offer, Exchange Act Rule 14e-3, the tender offer insider trading rule, prohibits any other person who is in possession of material nonpublic information relating to the tender offer and acquired from the offering person to buy or sell securities that are the subject of the tender offer without disclosing the material non-public information a reasonable time before the purchase or sale. The prohibition in Rule 14e-3 does not apply to the offering person. The offering person is permitted to trade on its own information about the contemplated tender offer, subject to other applicable disclosure requirements. Therefore, the scope of the term "offering person" for purposes of the prohibition is important in determining whether Rule 14e-3 has been violated in a given instance.

For purposes of Regulation 14D and Schedule TO, the terms "offeror" and "bidder" are defined as any person who makes a tender offer, or on whose behalf a tender offer is made. The SEC staff has provided guidance on how to identify who is a bidder in a tender offer, including clarification that there can be multiple "co-bidders."[2] This guidance, however, was provided in the context of the filing requirements of Schedule TO and Regulation 14D and did not specifically address the scope of Rule 14e-3.

Until recently, neither the Commission nor the courts have addressed how the reference to "offering person" in Rule 14e-3 applies to another party or parties who join with the offering person in a tender offer and would be considered co-bidders for purposes of Regulation 14D. In a recent ruling, a federal district court in California held that such an arrangement between a hedge fund and a bidder in an exchange offer raised "serious questions" under Rule 14e-3 based on the specific facts and circumstances of the case, but the court declined to enjoin the hedge fund from voting its shares at a special meeting.[3]

SEC staff is closely following the outcome of the litigation, which I understand is ongoing, and continues to monitor the issue more generally.

[2] *See* "Current Issues and Rulemaking Projects Outline, Section II.D.2., Mergers & Acquisitions - Current Issues – Identifying the Bidder in a Tender Offer," (November 14, 2000) *available at* http://www.sec.gov/divisions/corpfin/guidance/ci111400ex_tor.htm.

[3] *Allergan v. Valeant Pharm. Int'l, Inc.*, Case No. SACV-1214 DOC (C.D. Cal. Nov. 4, 2014).

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Rep. Sinema

As you know, a rule has been proposed that would require public corporations to disclose their political spending to shareholders. Untraceable corporate spending is a threat to our democracy, and a major concern for shareholders who invest in corporations. It is my understanding that the agency has received over 1.2 million supportive public comments. Can we expect roundtables on this topic soon to move the process forward, and show that the agency is being responsive to its constituency?

Response: The SEC currently is considering numerous rules, including those required by the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Jumpstart Our Business Startups Act. We remain committed to completing the mandated rulemakings that remain. As a result, the most recent Regulatory Flexibility Act agenda published continues to focus largely on these Congressional mandates, while also including certain additional significant areas of focus, such as potential enhancements to U.S. equity market structure and possible improvements to risk monitoring and regulatory safeguards in the asset management industry. I am mindful of the public interest on the topic of corporate political spending disclosure and the fact that rulemaking petitions have been filed with the SEC on this topic, but I have directed SEC staff to focus its efforts on the rulemakings and other initiatives included in our published regulatory agenda.

Questions for the Record for Mary Jo White, Chair, Securities and Exchange Commission, Submitted by Ranking Member Waters

1. **In 2008 the SEC brought two enforcement actions against investment banks for auction-rate securities issued by state and local governments for which the banks were underwriters. The SEC found that the banks led investors to believe that there was a deep, liquid market for the securities. However, the banks knew that the banks frequently propped up the auctions and that the market would collapse if banks stopped buying, which they knew was likely to happen in the deteriorating market.**

   The SEC acted on behalf of investors and told the Committee that investors would get 100 cents on the dollar, plus consequential damages such as credit downgrades for missed or delayed payments.

   But the state and local government issuers were hurt worse from the collapse of the auction-rate securities market than investors and were less sophisticated than the large institutions that bought the securities. The securities laws also protect municipal issuers, but the SEC has done nothing on their behalf.

   Why has the SEC not taken action on behalf of municipal issuers hurt by the collapse of the auction-rate market?

   Why has the SEC not investigated the banks that were underwriters for both auction-rate securities and variable-rate demand obligations? And, why has it not policed the auctions and the remarketing for outstanding bonds for violation of the Municipal Securities Rulemaking Board's fair dealing rule for a material misrepresentation to municipal issuers?

   Response: The SEC takes seriously its responsibility to investigate and, wherever possible, pursue securities law violations that harm issuers. Toward that end, we have brought several actions against market participants in which municipal issuers were victimized by unlawful conduct. For example, we settled several actions against major financial institutions for their role in a series of complex, wide-ranging bid-rigging schemes involving derivatives sold to municipalities as reinvestment products. Those firms paid $205 million to settle Commission actions, all of which was distributed to harmed issuers. *See In the Matter of Banc of America Securities*, Securities Exchange Act Release No. 63451 (Dec. 7, 2010); *SEC v. UBS Financial Services Inc.*, Civil Action No. 11-CV-2885 (D.N.J. May 4, 2011); *SEC v. J.P. Morgan Securities LLC.*, Civil Action No. 11-CV-3877 (D.N.J. Jul. 7, 2011); *SEC v. Wachovia Bank, N.A.*, Civil Action No. 2:11-cv-07135-WJM-MF (D.N.J. Dec. 8, 2011); *SEC v. GE Funding Capital Market Services, Inc.*, Civil Action No. 2:11-cv-07465-WJM-MF (D.N.J. Dec. 23, 2011).

   In addition, in 2010, the Enforcement Division established a specialized unit to investigate potential securities law violations involving municipal securities. Since that time, the staff in that unit has developed expertise associated with issues unique to the municipal securities market and has investigated matters that involve potential harm to investors in municipal securities, issuers, and taxpayers.

With respect to your inquiry concerning the existence of investigations related to underwriter banks, the SEC conducts its investigations on a confidential basis. We do so in order to protect the integrity of our investigations, safeguard the privacy of witnesses, and avoid damaging the reputations of persons who may not be charged. For these reasons, the Commission generally does not acknowledge the existence or non-existence of any investigation unless and until charges are filed.

2. **The contrived market for municipal variable-rate securities, both auction-rate securities and variable-rate demand obligations, largely depended on those securities having AAA ratings. Specifically, investors would not buy any more securities and would probably try to unload the securities they held, and municipal issuers would be stuck either paying exorbitant interest rates or buying all the outstanding securities back with emergency lending, also with exorbitant interest rates, and then do a panicked refinancing. This is exactly what happened during the 2008 financial crisis.**

   Most municipal securities only had AAA ratings because they had bond insurance by an insurer with AAA rating. During the financial crisis, all of these bond insurers either went under or were severely downgraded, mainly because they also insured mortgage-backed securities or even more exotic financial instruments, like collateralized debt obligations.

   It was widely known on Wall Street well before the financial crisis that the AAA ratings of bond insurers were extremely dubious.

   In addition, the banks involved in municipal finance were all involved in mortgage-backed securities, both of which were enormous, highly profitable lines of business that required AAA-rated debt, which depended on insurance from AAA-rated bond insurers. At the time, the banks hotly disputed criticisms of the AAA ratings for MBIA, Ambac or any other bond insurer.

   It is unlikely that many public municipal issuers even knew that there were questions about the insurers' AAA rating. If a municipal issuer did ask their underwriter about those questions, the underwriter likely dismissed their concerns.

   Has the SEC investigated whether the underwriter banks knew or should have known that bond insurers' AAA ratings were undeserved and likely would not last, or what representations the banks made about bond insurance to municipal issuers? If not, why not?

   Response: As noted above, the SEC brought several actions related to ARS. Among other actions taken to address misconduct related to the financial crisis, the SEC investigated and brought enforcement actions against 175 entities and individuals, including 70 executive officers. I am unable to comment on the existence of the specific investigation you inquire about, because, as noted above, the SEC conducts investigations on a confidential basis. However, as we have stated publicly, the SEC has largely completed its enforcement activity related to misconduct arising from the 2008 financial crisis and is focusing on current fraudulent schemes that may imperil investors, issuers and taxpayers. Among other things, the SEC faces a 5-year statute of limitations, which would preclude key remedies for any additional financial era crisis cases.

3. **The nation now faces a $3.2 trillion deficit for repairs to existing infrastructure, and 85 percent of our infrastructure was paid for by state and local governments, mostly with money borrowed on reasonable terms. Many state and local governments are now stuck with "innovative" debt, that is just as predatory as subprime mortgages, and those state and local governments can't even think about repairing existing infrastructure or investing in new infrastructure.**

   For example, the Detroit Water and Sewer District infrastructure is badly in need of repairs and improvements, but DWSD paid $537 million in termination payments on interest rate swaps in 2012. Approximately 40 percent of the DWSD's revenue now is for debt service, and water bills have soared.

   The law that Congress passed that created the Municipal Securities Rulemaking Board directed the MSRB to establish market integrity rules for municipal finance and directed the SEC to enforce those rules. The MSRB's fair dealing rule requires the banks to deal fairly with "all persons," and not engage in any "deceptive, dishonest or unfair practice." The MSRB and the SEC say that "all persons" includes municipal issuers and taxpayers. Yet, the SEC has done very little to protect municipal issuers or taxpayers. The SEC investigated auction-rate securities, but only for investors. The SEC said very much as an afterthought that the stunning corruption in Jefferson County, Alabama harmed not just investors, but also taxpayers.

   What steps is the SEC taking or prepared to take to ensure that the SEC also protects municipal issuers and taxpayers when they get cheated in violation of the law?

   Response: As you note, during the financial crisis, a number of municipalities suffered losses from complex derivatives products that were marketed by unregulated financial intermediaries. Since that time, the Commission has taken a number of steps to protect investors, issuers, and taxpayers from violations of the securities laws.

   As noted above, in 2010, the Enforcement Division established a specialized unit to investigate potential securities law violations involving municipal securities. The staff in that Unit has developed expertise associated with issues unique to the municipal securities market and has investigated matters which involve potential harm to investors in municipal securities, issuers, and taxpayers. Among the conduct the unit investigates is misconduct by broker-dealers, investment advisers, and municipal advisors, including conduct which victimizes municipal issuers. For example, in August 2011, the SEC filed a civil injunctive action against Stifel, Nicolaus & Co., Inc. and its former Senior Vice President, David Noack, for allegedly violating federal securities laws in connection with a $200 million sale of highly leveraged and unsuitably risky derivatives to five Wisconsin school districts. *See SEC v. Stifel, Nicolaus & Co., Inc. and David W. Noack*, Litigation Release No. 22064 (Aug. 10, 2011). The Commission also charged, and settled with, RBC Capital Markets, LLC for its involvement in these sales. According to the order instituting administrative and cease-and-desist proceedings, RBC negligently recommended and sold these investments, despite significant internal concerns about the suitability of the investments for municipalities like the school districts. Moreover, RBC's marketing materials failed to explain adequately the risks associated with the investments. *See In the Matter of RBC Capital Markets, LLC*, Securities Exchange Act Release No. 65404 (Sept. 27, 2011).

In September 2012, pursuant to Section 979 of the Dodd-Frank Act, the SEC established an independent Office of Municipal Securities to administer the rules pertaining to broker-dealers, advisors, investors, and issuers of municipal securities, and to coordinate with the MSRB on rulemaking and enforcement actions. In September 2013, the Commission adopted new rules pursuant to Section 975 of the Dodd-Frank Act, which will protect municipal entities from conflicted advice and unregulated advisors by requiring municipal advisors to register with the SEC and to comply with MSRB rules.

The MSRB is currently developing a regulatory framework for municipal advisors. The SEC approved new MSRB rules establishing supervisory and compliance obligations (October 2014) and professional qualification standards for municipal advisors (February 2015). The MSRB recently filed with the SEC proposed Rule G-42 to establish the duties and core standards of conduct for municipal advisors (April 2015), and the MSRB is working to develop amendments to its "pay to play" rule and gifts and gratuities rule to extend those restrictions to municipal advisors.

In addition, municipal advisors are subject to inspection and examination by the SEC and FINRA. In August 2014, the SEC's Office of Compliance Inspections and Examinations announced its examination initiative directed at newly regulated municipal advisors. The SEC, FINRA, and the MSRB are also working collaboratively to coordinate their respective municipal advisor examination programs.

Taken together, I believe these steps will help us more effectively identify and address misconduct that harms municipal issuers and taxpayers.

4. **The history of municipal finance illustrates the need for effective "pay to play" rules that are robustly enforced by the SEC. For example, in 2008 the SEC found that a local firm in Jefferson County, Alabama, received millions in fees for municipal bond offerings and related swap agreements. The firm appeared to add nothing to the transactions other than political connections and was hired entirely because the chairman of the county commission insisted that the firm be included. In addition, the firm paid kickbacks to the chairman of the county commission.**

   The SEC concluded that the scheme deprived Jefferson County of "an objective and impartial bond underwriting process and swap agreement negotiations." The SEC fined J.P. Morgan Securities $25 million for its role as underwriter of the securities in

the scheme, required it to pay $50 million to Jefferson County, and most importantly, required it to forfeit more than $647 million in termination payments on interest rate swaps.

Similarly, in Detroit, the SEC found in 2012 that the former mayor and the former city treasurer received lavish gifts "to peddle influence over the [City's pension] fund's investment process." Both were convicted of corruption.

However, unlike the case involving Jefferson County, there does not appear to have been any SEC investigation into Detroit's municipal bonds and related swap agreements, despite the fact that Detroit's bonds and swaps appear to have been at least as toxic as the Jefferson County bonds and swap agreements were to Jefferson County.

In 2012, Detroit Water and Sewer District made a $537 million termination payment on interest rate swaps as part of a refinancing. As a result of the debt service, water rates soared, not just for Detroit but for surrounding towns that get that water from Detroit. The City cut off service for thousands of families that failed to pay their water bills after the drastic increase.

Has the SEC investigated Detroit's municipal finance and related interest rate swap agreements to see if the underwriting process and swap negotiations were "objective and impartial?"

Has the SEC investigated any other municipal issuer for the kinds of misconduct the SEC found in public finance in Jefferson County and in pension investments in Detroit? If not, why not?

Response: Our action against J.P. Morgan Securities reflected a comprehensive investigation of wrongdoing in connection with certain abuses in the municipal securities market. In that matter, the SEC alleged that J.P. Morgan Securities engaged in an improper payment scheme in connection with obtaining municipal securities underwriting and interest swap agreement business from Jefferson County, Alabama. The Commission alleged that J.P. Morgan Securities incorporated certain of the costs of these payments into higher swap interest rates that it charged the County, directly increasing the swap transaction costs to the County and its taxpayers. J.P. Morgan Securities was censured, paid a $25 million civil penalty, made a $50 million payment to the County, and forfeited more than $647 million in claimed termination fees under the swaps. *See In the Matter of J.P. Morgan Securities Inc.*, Securities Exchange Act Release No. 60928 (Nov. 4, 2009). *See also SEC v. Larry P. Langford*, et al., Litigation Release No. 20545 (Apr. 30, 2008) and *SEC v. Charles E. LeCroy and Douglas W. MacFaddin*, Litigation Release No. 21280 (Nov. 4, 2009).

Our action against Detroit's public officials for misconduct in connection with the investment of public pension fund assets also reflected a comprehensive investigation into potential violations of the federal securities laws by those parties. *See SEC v. Kwame M. Kilpatrick, Jeffrey W. Beasley, Chauncey C. Mayfield, and MayfieldGentry Realty Advisors, LLC*, Litigation Release No. 22362 (May 9, 2012); *SEC v. MayfieldGentry Realty Advisors, LLC*, *Chauncey C. Mayfield, Blair D. Ackman, Marsha Bass, W. Emerey Matthews, and Alicia Diaz,* Litigation Release No. 22720 (June 10, 2013).

Due to the confidential nature of our investigations, we are not able to comment on any charges that were not filed in the Detroit matter, nor are we able to comment on any other investigations unless and until charges are filed.

5. **The "mis-selling" of interest rate swaps by banks to borrowers to create a "synthetic" fixed interest rate has become a worldwide scandal. The UK Financial Services Administration conducted a pilot survey of interest rate swaps in 2012 and found that 90 percent "did not comply with one or more of our regulatory requirements." The UK FSA found that banks failed to properly disclose exit or termination costs; failed to properly ascertain whether customers understood the complexity of the swaps and their risks; and sold the swaps based on the banks' own financial rewards and incentives, not their customers' best interests. "In the pilot we found that in a high proportion of sales customers were not given sufficient information to enable them to understand the potential size of the break cost," the FSA concluded. "We saw examples in the pilot where the break cost exceeded 40% of the value of the underlying loan."**

   The financial regulatory requirements in the UK are very similar to the MSRB's fair dealing rule, and many municipal issuers here have paid tens or even hundreds of millions of dollars in termination payments on swaps already, and many more continue to pay on the swaps because they can't afford termination payments.

   Why has the SEC not conducted at least a pilot survey like the FSA's pilot survey into whether interest rate swaps sold here to municipal issuers complied with the fair dealing rule?

   Response: A practice in the years prior to the financial crisis was for U.S. municipalities to enter into floating-to-fixed interest rate swaps contemporaneously with issuing variable rate securities, in order to avoid higher interest rates on the bonds they issued. As a result of declining interest rates, in the years following the financial crisis, many municipalities lost money on floating-to-fixed swap agreements, either by paying higher interest rates or termination fees. Because those swaps were entered into in the period prior to the financial crisis, the 5 year statute of limitations likely bars certain important remedies and limits the SEC's ability to address potential misconduct in the sale of those swaps. To the extent complex derivative products are currently being marketed and sold to issuers, I believe the new municipal advisors regulatory regime and examinations conducted by our Office of Compliance Inspections and Examinations of municipal advisors and broker-dealers should enhance our ability to identify similar sales practice abuses in the future.

Response to questions from Rep. Sherman concerning the Commission's oversight of FASB and economic studies on the lease accounting proposal

Q: Last time I asked you, you said you were aware of the proposal still kicking around the Financial Accounting Standards Board to add $2 trillion to the balance sheets of American business and the terrible impact that would have not only on the companies that you regulate, but many private companies as well that would be in violation of their loan covenants. FASB is, in effect, empowered by the SEC. And you were courageous enough last time – courageous may be overstating it. You stood up last time and said your agency has to take responsibly for what they do, since you've empowered them. You also said at that time I probably ought to give you a further response for the record. Don't have that one yet. But what has the SEC done since last time we talked to see whether the power that you've delegated to the FASB won't come down like a ton of bricks on small companies and on real estate and on the many people engaged in construction?

Response: As you know, the Commission has authority to set accounting standards for public companies and other entities that file financial statements with the Commission. The Commission has recognized the FASB as the U.S. accounting standard setter, but the Commission maintains oversight of the process. In particular, the SEC's Office of Chief Accountant actively monitors the activities of the FASB and maintains a regular dialogue with them on various accounting standard projects, including the current project on lease accounting.

Current standards for lease accounting, although generally understood in practice, result in significantly different accounting treatment for economically similar transactions. Those standards have been criticized for failing to meet the needs of users of financial statements because they do not always provide a faithful representation of leasing transactions. In particular, they omit information about significant assets and liabilities arising from operating leases.

In an effort to improve lease accounting, the FASB, in a joint project with the International Accounting Standards Board, issued exposure drafts on lease accounting in August 2010 and May 2013. The Boards' May 2013 lease proposal, which built upon the August 2010 proposal and included modifications in response to comments, would require substantially all leases to be reported on a company's balance sheet. SEC staff understands that the Boards have substantially completed their deliberations, including consideration of constituent feedback on the May 2013 proposal, and, as disclosed publicly on the FASB website, the FASB estimates that it expects to issue its final standard in the fourth quarter of 2015. The SEC staff has observed that in response to constituent concerns regarding potential complexity and costs associated with implementing the proposed standard, the FASB expects to make significant changes since the May 2013 proposal to address these concerns.

Some constituents have expressed concerns about potential debt covenant violations that could result from the proposed standard. The FASB understands from its outreach that some covenants automatically adjust for changes in accounting standards, while others do not. To address the second category of debt covenants, which may be more prevalent for small businesses, SEC staff understands that the FASB has been exploring alternatives that would minimize or potentially even eliminate this concern. One potential alternative would be to provide for an extended implementation period which would enable debt agreements to be renegotiated in the normal course of business. SEC staff also understands that the FASB has been considering whether the lease related liabilities could be characterized in a manner that would clarify that the liabilities should be viewed differently from debt.

Q: Do you have any economic studies that refute the ones that I've brought to your attention that says this is an economic disaster in the making?

Response: Staff in the SEC's Division of Economic and Risk Analysis (DERA) analyzed "The Economic Impact of the Current IASB and FASB Exposure Draft on Leases" by Chang & Adams Consulting, which it believed to be the report that you reference. DERA noted that the adoption of the FASB/IASB proposal would lead to recognition of an additional asset and liability on the balance sheet and a corresponding deterioration of financial ratios for affected companies. The staff found it questionable, however, whether investors' perception of the riskiness of companies would be affected by the adoption of the proposal, given the evidence from the economic literature suggesting that investors understand and price the underlying risks carried by operating lease agreements.[4] As such, the staff concluded that the report's conclusions on either the direction or magnitude of the economic effects were not supported.

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[4] *See* Altamuro, J., Johnston, R., Pandit, S., Zhang, H. 2014. Operating Leases and Credit Assessments. *Contemporary Accounting Research* 31, 551-580; Dhaliwal, D., Lee, HS., Neamtiu, M. 2011. The Impact of Operating Leases on Firm Financial and Operating Risk. *Journal of Accounting, Auditing and Finance* 26, 151-197; Ely, K. 1995. Operating Lease Accounting and the Market's Assessment of Equity Risk. *Journal of Accounting Research* 33, 397-415; Finnerty, J., R. Fitzsimmons, and T. Oliver. 1980. Lease Capitalization and Systematic Risk. The Accounting Review LV (4): 631-639; Kothari, S.P. 2001. Capital Markets Research in Accounting. *Journal of Accounting and Economics* 31, 105-231; Pratt, J. Financial Accounting in an Economic Context, 8th Edition; Subramanyam, K.R., Wild, J. Financial Statement Analysis, 10th Edition; Wilkins, T., I. Zimmer. 1983 The Effect of Leasing and Different Methods of Accounting for Leases on Credit Evaluation. *The Accounting Review* LVIII (4): 749-764.