

**NOMINATIONS OF HESTER PEIRCE, CAROLINE
CRENSHAW, AND KYLE HAUPTMAN**

HEARING
BEFORE THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

ON

NOMINATIONS OF:

HESTER PEIRCE, OF OHIO, TO BE A MEMBER OF THE SECURITIES AND
EXCHANGE COMMISSION

CAROLINE CRENSHAW, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER
OF THE SECURITIES AND EXCHANGE COMMISSION

KYLE HAUPTMAN, OF MAINE, TO BE A MEMBER OF THE NATIONAL CREDIT
UNION ADMINISTRATION BOARD

JULY 21, 2020

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**NOMINATIONS OF HESTER PEIRCE,
CAROLINE CRENSHAW, AND KYLE HAUPTMAN**

TUESDAY, JULY 21, 2020

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10 a.m., remotely, via WebEx, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. This hearing will come to order. This hearing is another remote hearing by video, and again a few videoconferencing reminders you should all have memorized by heart, by now. Once you start speaking there will be slight delay before you are displayed on the screen. To minimize background noise, please click the Mute button until it is your turn to speak or ask questions. If there is a technology issue we will move to the next Senator until that is resolved.

I remind everybody again, and the witnesses, that the 5-minute clock still applies and there should be a 5-minute clock in one of the boxes on your screen. Please pay attention to it, and I will try to remember to do that 30-second tapping just before your time runs out so that you can recognize the need to look at that clock and wrap up.

To simplify the speaking order, Senator Brown and I have agreed to go by seniority for this hearing.

This morning we will hear testimony on the nominations of the Honorable Hester Peirce, of Ohio, to be a member of the Securities and Exchange Commission; Ms. Caroline Crenshaw, of the District of Columbia, to be a member of the Securities and Exchange Commission; and Mr. Kyle Hauptman, of Maine, to be a member of the National Credit Union Administration Board. Welcome and congratulations on your nominations to each of you.

Commissioner Peirce and Ms. Crenshaw both have been nominated to serve as SEC Commissioners. The SEC is charged with an important mission to protect investors, maintain fair, orderly, and efficient markets, facilitate capital formation, and enforce securities laws. I commend Commissioner Peirce and her colleagues at the SEC for their quick and decisive response to the current COVID-19 pandemic. The SEC has successfully balanced the emergency response to COVID-19 while continuing to maintain fundamental operations, such as rulemaking initiatives, conducting risk-based inspections, bringing enforcement actions, and reviewing issuer and fund filings. I encourage the SEC to continue these efforts, includ-

ing advancing important rulemaking efforts related to capital formation and corporate governance.

Commissioner Peirce is highly qualified for her position, previously serving as a Senior Counsel at this Committee and currently serving as an SEC Commissioner since January of 2018.

Next we have Ms. Caroline Crenshaw. Ms. Crenshaw has worked at the SEC since 2013, working in the Office of Compliance, Inspections, and Examinations, the Division of Investment Management, and as Counsel to Commissioners Kara Stein and Robert Jackson. In addition to her work at the SEC she is a captain in the U.S. Army Reserve Judge Advocate General's Corps. Ms. Crenshaw, we thank you for your service.

Turning to Kyle Hauptman, who has been nominated to the Board of the National Credit Union Administration. The NCUA plays a critical role in overseeing and ensuring a major segment of our Nation's community financial institutions, federally insured credit unions. Mr. Hauptman is well prepared to join the NCUA board thanks to his prior Government and private sector experience. Mr. Hauptman has served as the Economic Policy Advisor to Senator Tom Cotton since 2017. He also did work on S. 2155, the Economic Growth Regulatory Relief and Consumer Protection Act, which contains several important provisions that provided regulatory flexibility and relief for credit unions.

Before his Government service, Mr. Hauptman had a career in the financial services industry, where he developed expertise managing liquidity and credit and interest rate risk in fixed income portfolios. In the coming months, both the SEC and NCUA will be on the front lines helping consumers, retail investors, and businesses of all sizes recover from the economic impacts of the COVID-19 emergency.

If confirmed, I look forward to working with each of these nominees on many important issues within their respective policy areas. Congratulations again on your nominations, and I again thank you and your families for your willingness to serve.

Senator Brown.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Chairman Crapo, for holding today's hearing. First I want to take a brief moment to remember my friend and colleague, Congressman John Lewis. Let us honor his legacy by following his example of leadership and courage and his unrelenting fight for justice.

I welcome today's nominees. Congratulations to the three of you and to your families. The Committee will consider two nominees, as the Chairman said, to the Securities and Exchange Commission, Commissioner Hester Peirce for a second term and Ms. Caroline Crenshaw; and Mr. Kyle Hauptman as a nominee to be a board member of the National Credit Union Administration.

Today also marks, federally, today, the 10-year anniversary of the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We passed Wall Street reform to prevent another financial crisis. Right now we face an even greater, more complex public health and economic crisis and a looming housing crisis. Families are making impossible decisions about how to pay their

rent and put food on the table, or are grieving the loss of a mother or a father or a child. And we know one of this pandemic's greatest tragedies is that people die alone. It is black and brown Americans disproportionately affected, working on the front lines to get us through this and helping to save lives while themselves too often grieving lost ones.

Wall Street reform was meant to prevent catastrophe in our financial system. We need to aim higher than that today, yet Wall Street has spent years trying to dismantle the basic important protections put in place through Dodd-Frank. Republicans and the Trump administration have been all too happy to oblige Wall Street. It did not take long for Wall Street to recover from this crisis. They were making record profits. They were refusing, at the same time, to pay their workers a living wage. This only caused the wealth gap to grow even further.

The current coronavirus crisis is showing us what happens when we do not protect working people. We cannot leave them behind again. And leadership matters. We see that every day—140,000 Americans dead on the President's watch. We are just 5 percent of the world's population yet we account for almost 30 percent of the world's deaths. It is not because we do not have good doctors and smart scientists and hard workers. It is because of leadership, or precisely lack of leadership. And those who this body confirms to leadership posts today, and other days, also matter.

All of the nominees, if confirmed, can support policies that protect these working families, families who are consumers and investors and credit union members. You can encourage companies and credit unions to offer fair products to Americans left out of our financial system and make sure our markets and economy work for everyone.

The question facing us today is will you show that leadership and make those kinds of choices? If confirmed, Ms. Peirce would continue her work as a Commissioner for 5 more years. She brings the experience of working for the last two Democratic Commissioners—excuse me. Ms. Crenshaw brings the experience of working for the last two Democratic Commissioners, fighting for investors. Her continuing service in the military allows her to bring a very different perspective to this job. If confirmed, she would be the first Commissioner in modern times to be in the active Reserve, joining a handful of Commissioners over the history of the SEC who have served in the Armed Forces.

Commissioner Peirce and Ms. Crenshaw, you will be called upon to tackle market swings and investment scams related to the pandemic. You must also keep your eyes on existing problems that, as is so much during the pandemic that are getting worse.

As the biggest companies and banks, in particular, have grown and become more powerful, we have seen corporate executives pay themselves with stock buybacks while, at the same time, laying off workers, cutting their pay, and underinvesting in their communities, all while avoiding any accountability. The SEC has a role in addressing each of these issues. Executives must be responsible to stakeholders, including workers and communities. That means the SEC should not be changing its rules since it will take away smaller investors' ability to hold management accountable and raise im-

portant issues to other shareholders. Shareholder democracy is not just for the big guys.

The COVID pandemic has also shown how important essential workers are to our economy and how little information companies disclose about their workers. The public needs more information about how a company engages with its workers, because that helps investors understand how that company will deal with a crisis. And soon enough, corporate executives will want to reward themselves and their biggest investors again with stock buybacks. The safe harbor for stock buybacks has barely been touched in four decades, but it seems investor and market protections are chipped away at year after year after year. When we have seen companies spend as much as literally 100 percent of their profits on their own stock instead of capital investment or workers' wages, it is clear that stock buybacks rules need an overhaul.

The COVID pandemic has also shown us how important it is to have local financial institutions that serve their communities. We have seen credit unions, like the ones in my home State of Ohio, work with their members to get through this crisis. The NCUA is key to making sure that our credit unions are resilient in good times and bad times.

Yet the NCUA, under the Trump administration, has been chipping away at the very protections we put in place after the last financial crisis, rules that protect homeowners and that set strong capital and loan reserve standards, allow credit unions to lend in their communities during a downturn, much like the one we face now.

Mr. Hauptman was a trader at Lehman Brothers when it failed, accelerating the financial crisis. You would think he would understand what a financial crisis can mean, yet he has spent his career railing against the Dodd-Frank Act. Credit unions were created when other financial institutions were not serving all their customers. We have often seen them help those that big banks have left behind, including workers, including people of color. Now is the time to implement even stronger protections and safeguard consumers and our financial system. If confirmed, Mr. Hauptman will need to make sure that the credit union system continues to serve these communities, which means doing more to protect credit union members, not rolling back regulation.

Mr. Hauptman has no credit union experience. He says he wants this job because people who love their financial institutions are usually credit union members. But being glad that credit union members serve their customers is not a reason he is qualified to be one of the top three credit union regulators. It means he should be a credit union customer.

Later today, this Committee will mark up the nomination of Judy Shelton to be a member of the Federal Reserve Board. Even before the pandemic, my colleagues and I, many on both sides of the aisle, were concerned about her qualifications and commitment to helping working families, and her independence from the President. She has advocated for failed Depression-era policies, like a return to the gold standard and the removal of deposit insurance. At her nomination hearing she failed to explain how she would handle an economic crisis. That hypothetical economic crisis is now a re-

ality, and we have no idea how Dr. Shelton would respond. That is why it is so important to carefully evaluate nominees based on their record, their experience, their service to this country. That is whom you ultimately serve, the American people.

A regulator's job is not to do favors for Wall Street firms and corporate interest groups or lobbyists or revive debunked economic theories. We entrust regulators to make sure that all Americans can prosper in a safe financial system and a fair economy. Today we need to hear from each of you how you will help and protect the American people that make our economy work.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, Senator Brown.

We will now administer the oaths. As we have discussed with each of you before, but individually, but I will ask each of you to stand and raise your right hands. And then I will go to each of you individually.

Commissioner Peirce, do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. PEIRCE. I do.

Chairman CRAPO. And do you agree to appear and testify before any duly constituted committee of the Senate?

Ms. PEIRCE. I do.

Chairman CRAPO. Thank you. And next, Ms. Crenshaw. Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. CRENSHAW. I do.

Chairman CRAPO. Thank you. And do you agree to appear and testify before any duly constituted committee of the Senate?

Ms. CRENSHAW. I do.

Chairman CRAPO. Thank you. And now Mr. Hauptman. Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. HAUPTMAN. I do.

Chairman CRAPO. And do you agree to appear and testify before any duly constituted committee of the Senate?

Mr. HAUPTMAN. I do.

Chairman CRAPO. Thank you. You may all take your seats.

Your written statements will be made a part of the record in its entirety, and as you know, we have allocated you 5 minutes each for an opening statement. We will have you make those statements in the order that I swore you in, so Commissioner Peirce, you may begin.

STATEMENT OF HESTER PEIRCE, OF OHIO, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

Ms. PEIRCE. Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you for considering my nomination to be a member of the Securities and Exchange Commission. Having served as a Commissioner for 2½ years, I am honored that the President has nominated me to serve another term. If confirmed, I look forward to using the next 5 years, alongside the dedicated, experienced SEC staff, to unleash the power of our securities markets in order to brighten more children's futures, build more

Americans' retirement nest eggs, transform more communities across the Nation, and rebuild an economy weakened by COVID. I am delighted about the possibility of serving with Caroline Crenshaw, whose experience at the Commission, in the military, and in private practice would enrich our deliberations as a Commission.

I have spent the last 20 years working on financial regulation. Part of that time was spent working for Senator Shelby on this Committee, and more than half of that time has been at the SEC. The agency has been extremely productive under the effective leadership of Chairman Jay Clayton, and I have enjoyed helping to carry out his regulatory, compliance, and enforcement agenda.

On the regulatory front, we have enhanced retail investor protection by, among other things, codifying a regulatory framework for exchange-traded funds, adopting a best interest standard for retail brokers, and streamlining variable product disclosures. We also have applied a benefit-cost lens to public company regulatory obligations, initiated changes to equity market structure so that it can serve investors and companies of all sizes, and scaled regulatory requirements for small entities. We have worked, with urging from me, the ever-vocal Midwesterner, to streamline the capital raising process for small companies and entrepreneurs all across the country, not just on the coasts. We also have provided temporary relief for firms adjusting to the work-from-home environment and to small businesses trying to raise funds to survive the COVID crisis.

An integral complement to our regulatory work is the Commission's compliance function, which includes inspecting firms and engaging with them as they seek to apply the rules to their unique facts and circumstances. I have supported cooperation with other regulators and compliance personnel at regulated entities to maximize our collective coverage and effectiveness. I also have advocated taking advantage of new technologies in overseeing the markets, with due consideration for legitimate concerns about data protection and over-surveillance.

On the enforcement side, we have brought charges against entities, large and small, and individuals, for a wide range of securities violations. Most recently, we have gone after securities violators hiding behind purported COVID-19 cures. Human nature being what it is, there is no dearth of bad conduct, so I have worked to focus our enforcement resources where they can make the most difference for investors and our markets.

Collaboration with domestic and international colleagues runs through everything the Commission does. I had the opportunity to work with Commissioner Brian Quintenz of the CFTC as we stood up our Dodd-Frank security-based swap regulatory regime. On that same issue, I cooperated with international counterparts to minimize market disruption and conserve regulatory resources. As the Commission's representative on one of the FSB's committees, I have supported sharing information and conducting joint analyses, but also have emphasized that decisions about how to regulate the U.S. markets need to be made here at home.

One concern I had going into the job was the difficulty that regulatory agencies have dealing appropriately with innovation in and disruption of the industries they regulate. This problem is an institutional problem. Large bureaucratic organizations, whether public

or private, do not handle change particularly well. I know, however, that the Commission can do better. If confirmed, in addition to continuing my work on strengthening the regulatory framework, I will redouble my efforts to create a more welcoming environment for innovation and new entrants. If the Commission takes up that challenge with the necessary seriousness and alacrity, our capital markets will remain dynamic, vibrant, and preeminent.

Thank you for considering my nomination, and I would be happy to take any questions you might have.

Chairman CRAPO. Thank you, Commissioner Peirce. Ms. Crenshaw.

STATEMENT OF CAROLINE CRENSHAW, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

Ms. CRENSHAW. First and foremost, thank you, Commissioner Peirce, for those kinds words, and if confirmed I would be honored to work with you as well.

Chairman Crapo, Ranking Member Brown, and distinguished Senators of the Committee, thank you for the opportunity to appear here today. It is an honor to testify before you regarding my nomination to be a Commissioner of the Securities and Exchange Commission, where I have worked for the past 7 years, and in whose mission I deeply believe.

I want to thank all those who have encouraged and supported me through this process: family, friends, colleagues, Members of Congress and their talented staff, and many others whom I did not know prior to my nomination. It has been an educational and memorable journey.

America's capital markets have powered the largest, most vibrant economy in the world. But our economy is facing unprecedented challenges and now, more than ever, I believe we must do all we can to keep our markets transparent, competitive, and safe. All Americans must have the confidence to invest their hard-earned savings in their futures.

That is the critical mission of the SEC, and it is the reason why I chose to transition my career from private practice to public service. I began my time at the SEC as a career staff attorney, helping oversee the institutions that manage millions of Americans' savings. More recently, I served as Counsel to two dedicated public servants, Commissioners Kara Stein and Robert Jackson, focusing on strengthening investor protections in our increasingly complex markets. It has been my great privilege to support the SEC's mission for the better part of a decade and see up close how our securities laws are built case-by-case and rule-by-rule.

But it is not just that experience that brings me before you today. I also carry with me the stories of soldiers, family, and friends who give the SEC's mission real meaning. As a captain in the United States Army Reserve, that mission means making sure my fellow soldiers have a fighting chance to secure the financial futures they deserve.

As a sister of an entrepreneur, it means making sure our markets unite job-creating capital with individuals like my brother, who recently started a small business. And as a new mother, it

means promoting the level playing field that will allow my family, and millions of other American families, to fund the rising costs of education by safely and confidently investing in our markets.

If confirmed, I intend to bring all of these experiences, from sister to staffer to soldier, to bear on the SEC's mission. You can count on me to be a tireless advocate for the ordinary American families who are the backbone of our economy.

One of the biggest challenges for those families, and for the Commission, is the retirement crisis facing the country. The Nation's shift from defined benefit pension plans, which my parents, and their parents before them, relied upon, to defined contribution plans, moved the responsibility of lifelong saving from employers to the individuals. That has left too many hard-working Americans without sufficient resources for retirement.

With investment decisions now largely in the hands of these individual Americans, the Commission should do all it can to ensure everyone gets a fair deal. It should provide clear, plain English information and access to high-quality investment advice that allow individuals to distinguish between financial advisors, on one hand, and fraudsters on the other, and to fund their retirements in safe and sustainable ways. Additionally, the Commission should keep a close watch over the large institutions increasingly entrusted with the growth and safekeeping of Americans' savings.

As a Washington, D.C., native who grew up just blocks away, on Capitol Hill, I have had the great benefit of being surrounded by dedicated public servants of all political stripes. If I have the honor of being confirmed, I will bring with me that commitment to public service and appreciation for diverse views as the Commission considers how best to help Americans grapple with the economic challenges before us.

Thank you for your time, and I would be delighted to answer any questions you might have.

Chairman CRAPO. Thank you, Ms. Crenshaw. Mr. Hauptman.

STATEMENT OF KYLE HAUPTMAN, OF MAINE, TO BE A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD

Mr. HAUPTMAN. Thank you Chairman, Ranking Member Brown, and Members of the Committee. It is an honor to be here. I would like to thank the President and his team, plus the NCUA staff that have been so helpful. I want to especially thank Senator Cotton for his support throughout this process.

I would like to say hello to those watching online, especially my wife, Kelly, who is pregnant with our first child, my brother, Gabe, and his husband, Geoff, my siblings-in-law, Katie and Marcus, and my parents-in-law, Sue and Mike.

When offered this nomination, I accepted immediately. It is a chance to help over 120 million credit union members achieve their financial goals. And if you encounter someone who actually loves their financial institution, there is a good chance you are speaking to a credit union member.

These last few months have demonstrated the cooperative nature of credit unions, as they have waived fees and adjusted loans without anyone in D.C. telling them to do so. Many of us also recall the

last Government shutdown when credit unions gained members by offering interest-free loans to furloughed workers. But this reputation depends on proper oversight from NCUA.

Before the Senate I worked on regulatory policy, including serving on a bipartisan SEC Advisory Committee. Prior to that I was in the financial sector, focused on the same money markets where credit unions obtain financing. Twelve years ago, I was a mid-level employee working in Asia for Lehman Brothers, and wound up losing my job, my savings, and my work visa, all due to management that did not fully understand the risks they were taking. That experience showed me first-hand the risks associated with liquidity, interest rates, and balance sheet management. This perspective should be both valuable and somewhat unique on the NCUA Board.

One of the best parts of serving in the Senate has been working with Arkansas credit unions and their companions in the Cornerstone Credit League in Texas and Oklahoma. I am confident that if you speak to them, they will tell you I have been knowledgeable and attentive regarding their concerns. And while I value those relationships, you can be sure I will be an independent regulator who works only for credit union members and the taxpayers who ultimately back NCUA insurance.

In addition to my interest in financial policy, I have a passion for public service, due to my upbringing. My father worked in the National Park Service for 32 years. Unfortunately, in the last 3 years both he and my mother passed away, but I think they would be proud to see me here. I should mention that both were lifetime Democrats, my mother a Bernie Sanders supporter.

On a related note, my Senate colleagues will tell you I work in a bipartisan fashion. I have worked on legislation with the majority of Committee Democrats, including with Ranking Member Brown's staff on reforming our anti-money-laundering laws. I have been impressed with the character and acumen of the Democratic staff, and in fact several have been to my home.

Credit unions help people achieve the same American dream that my dad experienced, born in Brooklyn to parents with 4th-grade educations. His dad, my grandfather, worked in the New York City subway, putting up advertising. That man's grandson is now before the U.S. Senate, a testament to American opportunity, and at NCUA my overarching goal will be extending that kind of opportunity to as many people as possible.

I will have three priorities at NCUA:

Priority one is the same as America's—managing the fallout from the current pandemic and economic downturn. I am aware that over 50 million people have filed for unemployment since March. And while the 2008 crisis began in the financial sector and then spread to Main Street, the current crisis may be the reverse. Credit unions were chartered to serve those of modest means, and I plan to work with them, the Board, and Congress on solutions for those facing financial stress.

My second priority is technology. This pandemic created a test case on how many things, such as this hearing, can be done remotely. I would like to expand technology's role in reaching the underserved.

If we recall the litigation years ago about Blockbuster Video's late fees and market dominance, the ultimate solution was Netflix and similar American innovations. While this analogy does not perfectly align with credit unions, I am convinced innovation can provide more inclusive financial services.

And last, aligning incentives. As we know from the last crisis, we get what we incentivize. One excellent policy that serves as a model here is the less-frequent exam cycle for credit unions that get the highest marks on their NCUA exams for safety and stability. This policy lets regulators focus on the more problematic credit unions, while the well-run credit unions strive to keep earning that benefit. This is policy where safety and soundness are well-aligned with serving members. If we do this correctly, we will combat poor-quality, high-priced products with better, lower-priced ones.

Thank you again for this opportunity, and I look forward to your questions.

Chairman CRAPO. Thank you, Mr. Hauptman. I will begin my questions with Commissioner Peirce.

Commissioner Peirce, you mentioned in your opening statement that you would like to continue to serve in your role as Commissioner because there is more work to be done. Could you elaborate a little more on what you mean by that? And I am particularly interested in the Commission's work on capital formation, corporate governance, and cryptocurrency.

Ms. PEIRCE. Thank you, Mr. Chairman. There is a lot of work to be done, and I feel that the work that I came to the Commission to do is not yet done. So first of all, we have to deal with the current crisis, the COVID crisis, and so part of my work will be trying to help the economy come out of that crisis.

And I think tied to that is capital formation, which you mentioned. So that is something that I have been working on, and specifically trying to focus on making sure that the entities that are not readily—they do not know lots of venture capitalists, they do not have wealthy friends and family—that those kinds of entities are able to get capital if they merit capital. And so that means looking at our exemptions to make sure that those exemptions make sense, and potentially adding some new exemptions such as, perhaps a micro-offering exemption.

And then also just seeing whether things like crowdfunding, have they lived up to their potential or are there things that we could do to make them work better?

And then another priority is to, as I mentioned in my opening statement, to try to work on the Commission's attitude toward innovation, which has been, I think, highlighted when we consider crypto. Crypto is clearly going to be here to stay, and I would like us to set up a regulatory framework that works well for crypto. And I think that we have some of the structure in place to do that, but we have a lot more work to do, and I would like to work on that.

Chairman CRAPO. Thank you, and I encourage you to continue your focus on those priorities.

Ms. Crenshaw, could you briefly discuss, in a little greater detail, your priorities, what you would like to focus on, if confirmed?

Ms. CRENSHAW. Senator, first and foremost, I think market stability is crucial in the current market turmoil. We need to make sure that investors are protected and that companies are getting the financial relief they deserve. So we need to conduct appropriate oversight to make sure that our market structure is working appropriately, for example, that our circuit breakers are working as they were designed to.

We need to make sure that we are providing relief as necessary to companies such as the crowdfunding release the Commission passed a few weeks ago, and make sure that investors are getting the information they need about companies and what companies are doing during this turmoil with their workers and with their jobs and with funds they are taking, to make sure that investors can appropriately allocate their money as we move forward.

I also think retail investor protection is another priority. I want to make sure that our enforcement program is deterring fraud as effectively as possible and that we are holding individuals to account, and on the rulemaking side, that retail investors are getting the high-quality investment advice that they deserve.

And finally, Senator, one of my priorities—again, these were just three, but one of my priorities would be to make sure that we are finalizing the Dodd–Frank rules, particularly the executive compensation rules.

Chairman CRAPO. Thank you. And Mr. Hauptman, the same question. Can you discuss—you went through your priorities, but could you just discuss, in a little more detail, what you would like to accomplish?

Mr. HAUPTMAN. Sure. Thank you, Chairman. Obviously the pandemic is priority one. That means both the health and safety of NCUA employees and how America's 5,200 credit unions can serve their members. This includes how to keep their lobbies open safely but also making sure they have all the tools to restructure debts, do the things credit unions have always done.

I would like to first say that this is exactly why capital is probably the holy grail of regulation. The credit union system was well capitalized going into this, but it is times like this when capital is the most important.

Second, technology, meaning we have had a nationwide experiment on how to do things remotely. Some of these lessons we may be able to continue with after the pandemic ends, especially useful for the underserved or those in rural areas. Remote access or online can be very useful to them.

And I think I am well prepared for this after over 20 years working in finance or finance policy. Credit unions are unique animals, as nonprofit collaboratives. But many of the basic of finance are similar in the industry, meaning mismanagement, corporate structure, structure meaning the debt you issue, et cetera. So having the right capital.

And I will mention this, last. There are three States in the Cornerstone Credit League that represent Arkansas credit unions—Texas, Oklahoma, and Arkansas—and only one of those Senators is on a Banking Committee. I have been the go-to person during my years here for all of them, and I think they would speak well of my abilities.

Chairman CRAPO. Thank you. Senator Brown.

Senator BROWN. Thank you for your opening statements, especially about the staff of this incredible Banking Housing Committee. Thank you.

We know many credit unions are doing what they can every day to help their members and communities, but today, at a time when we have record unemployment, families struggle to pay rent and put food on the table, we are hearing that some credit unions are garnishing members' COVID-19 stimulus checks to pay off outstanding debts, debt, in many cases, from these high fees they charge.

Over the years, we have heard reports of credit unions charging high fees and interest rates to their members while executives and management get sweetheart mortgages and other loans. These are issues that NCUA Board Member Harper is concerned about as well.

If confirmed, and this yes or no if you would, if confirmed will you commit to crack down on high fees?

Mr. HAUPTMAN. Yes, Senator. Everything possible. We would have better products at lower prices and low fees.

Senator BROWN. Thank you for that.

Ms. Crenshaw, you responded—I would like a little more detail on your response to the Chairman. Today, as I mentioned, it is the 10th anniversary of Dodd-Frank. The SEC has failed—has yet to finish the number of required rules, including ones that you mentioned to the Chairman, about compensation.

Talk about the importance of these requirements for transparency and accountability to the American public, as investors?

Ms. CRENSHAW. Thank you, Senator. I think these are key to accountability and transparency. As you mentioned, these are required by the law. But it is not just that these rules are mandated. It is absolutely critical that we are holding executives to account and making sure investors have the information they need to make the appropriate investment decisions. And I think claw backs, for example, is an area that we could do that extremely well. We want to make sure that we are holding executives to account, and we want to make sure these executives do not get to keep money that they did not earn.

So I would commit to you, Senator, that I would work to do all I can, if confirmed, to make sure that we get these rules passed.

Senator BROWN. Thank you, Ms. Crenshaw. Last month I sent a letter to Chair Clayton asking him to make sure that regulation best interest is enforced to maximize investor protection, including providing separate enforcement data. Are there ways to get the most out of the rule to better protect Americans' saving than investing for the future, Ms. Crenshaw?

Ms. CRENSHAW. I think it is critical that the SEC work with the Office of Compliance, Inspections, and Examinations and FINRA to drive successful compliance of this rule. That means working with the firms to make sure Form CRS is actually providing information that is useful to investors and that it is information that they can understand. And it is also working with firms to make sure that their policies and procedures are appropriate to mitigate conflicts of interest. And to the degree they are not, we have to be willing

to hold those firms accountable when they are not appropriately mitigating conflicts of interest.

And so we need to make sure, over time, that rules are actually changing the status quo for investors, and I would look forward to, if confirmed, working with staff to make sure that that is accomplished.

Senator BROWN. Thank you, Ms. Crenshaw.

Ms. Peirce, I am concerned about your reluctance to vote for monetary penalties and enforcement actions. Earlier this year, you did not approve the SEC's fine against Wells Fargo for misleading investors for years while management profited and promoted a culture that this Committee is very familiar with, that led to the opening of millions of fake accounts. It was a known fraud, furthered by management, with criminal and civil settlements. But you did not think a fine made sense. Help me understand your thinking.

Ms. PEIRCE. So when I approach an enforcement action that involves a corporation I think about who ultimately is going to pay that fine, and if it is going to be shareholders of the company who have already been harmed by the fraud, then I am very reluctant to vote in favor of a penalty that will come out of their pockets. So that is one of the things that drives my decisions with respect to corporate penalties.

But I would emphasize that in virtually the entire enforcement calendar the Commission is unified in voting for the enforcement recommendations. But that is one area where I am concerned that shareholders are getting hit twice.

Senator BROWN. There is a difference, Ms. Peirce, between shareholders and executives. You have raised, in the past, the importance of individual accountability, and yet at your last hearing I hear a lot about personal responsibility for people in this room. It seems that personal responsibility is always about low-income people and people of color, never about the CEOs and corporation that take advantage of them. You have had the chance to join other Commissioners and hold those bad actors responsible when they commit fraud or cover it up. You have chosen not to. That is my great concern.

As for Wells Fargo, just last week there were news reports that the bank falsely told bankruptcy courts that borrowers requested forbearance on their mortgages due to COVID-19. Those requests were made without the borrowers' knowledge and could lead to confusion and risk of foreclosures for borrowers and bankruptcy proceedings. There we go again with Wells Fargo. I do not know what it will take for their management to stop abusing the customers, but voting against penalties for their management certainly is not it.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you. Senator Cotton.

Senator COTTON. Thank you, Mr. Chairman, and congratulations to all three of you on your nomination today. But, of course, I want to congratulate, in particular, my indispensable advisor, Kyle Hauptman. I think most Senators can relate to how I feel about this development. On the one hand, Kyle will be a terrible loss to my office, the work that we have done on behalf of our Kansans

and all Americans over the last 3 years. But on the other hand our loss will be the NCUA's gains and the gains of everyone who does business with or is affected by credit unions in their communities. And I am very confident that our credit unions will benefit having Kyle's judgment and knowledge on the board.

I have to say, I know my staff is sad to be losing Kyle this year as well. Here is an email from my Deputy State Director who leads all of our casework, earlier this year, when she heard the news that Kyle had been nominated. The subject line is "You can't go!" And then in the body, "I won't have it!!! Seriously, we are going to miss you. The whole State staff is bummed because no one can ever take your place at keeping us informed," which I think is a testament to how well Kyle has worked not just with my staff but with all of your staffs and with the Committee staff as well.

Likewise, I would like to enter into the record, Mr. Chairman, a letter from the head of the Arkansas Credit Union Association. I will also quote from that letter here. "On behalf of the Arkansas Credit Union Association I will say that we probably feel the same way you do, that he will be difficult to replace, yet the NCUA is lucky to have him.

"I have gone to Washington for a couple of decades now on behalf of Arkansas credit unions, most of which are very small, rural institutions. Our largest credit union has just over \$1 billion in assets, which would be considered small even by community bank standards. The rest are even smaller, where you can count on one hand the number of ATMs they have.

"While advocating for these community-based lenders, I have encountered a lot of congressional staffers. He may be the best I have dealt with. Given his background at large international finance firms, you might think Kyle would not understand the needs of our members who are mostly low- or moderate-income families. Yet it is quite the opposite. He has gone above and beyond to listen, respond quickly, and empathize with their concerns. His knowledge of financial markets is an asset, not a liability."

I am aware that the NCUA board members are not like Senate staffers, meaning I will no longer be a constituent but rather someone working for the institutions Kyle will be regulating, but I think you will agree that he will continue to be fair, professional, and serious about his work.

Kyle is also indisputably bipartisan, working well with others. Like all the Senators on this Committee, I sometimes get in the occasional political scrap, but Kyle, nevertheless, approaches his job like a diplomat, working with all of our staff, working with the Committee staff, to keep dialogue open, to keep the people's business going forward. He has worked on innumerable bipartisan bills and letters, including on issues related to credit unions, plus bills on taxes and retirement policy, as well as other economic policies.

He also serves as the Staff Director for the Economic Policy Subcommittee that I chair, leading the hearings that we have conducted during this Congress, and the hearing that we will be conducting tomorrow, which I encourage all Senators to join us.

I often hear praise from constituents for Kyle, and the two most common refrains are he is easy to work, and few staffers have his in-depth knowledge and experience in all matters financial.

I trust this hearing will go well today, not just for Kyle but Ms. Peirce and Ms. Crenshaw, and I hope that we can move all three nominees forward promptly, perhaps on simply a voice vote.

So I will now close not with a question but simply to urge all of my fellow Senator to support Kyle's nomination. I can assure you he will be an excellent pick to serve on the NCUA. Thank you.

Chairman CRAPO. Thank you, Senator Cotton. Senator Tester.

Senator TESTER. Thank you, Mr. Chairman and Ranking Member Brown. This is for the SEC noms. I do not need to tell you that it is important that the SEC considers small and mid-sized businesses along with businesses in rural communities and those outside of big cities. So the question is, how will you ensure that efforts to address the impacts of the pandemic and economic crisis are directed toward businesses across a range of sizes and geographies?

You can go first, Hester, Ms. Peirce.

Ms. PEIRCE. Thank you, Senator. That is a very important issue and close to my heart as well. And so one positive change that we have had in recent years is we now have a small business advocate at the SEC, and we have a Small Business Capital Formation Advisory Committee, which has representatives from all across the country on it. And so together with them I plan to work on issues that will further their interests.

So for example, a month or so ago we adopted some temporary relief related to crowdfunding, which was intended to help businesses that have been in existence for some time and may be struggling to make it through this period. You can imagine that there are lots of people in the local community who know these businesses well and would like to support them with funding. And so that is something that we worked on in direct response to things that I heard from people on that committee, and I will continue to do that.

Senator TESTER. Ms. Crenshaw.

Ms. CRENSHAW. Thank you, Senator. I think it is key that we continue our appropriate oversight of markets during this time. We need to make sure that the markets are functioning properly for businesses of all sizes. We also need to make sure we are giving investors information about companies so that they can appropriately allocate their decisions to the best ideas out there.

And I, too, would like to work with the small business advocate. I have had the pleasure of working with Martha Miller over the past few years, and working with her to think through ideas to make sure that the capital is going to the best ideas out there. And I think one of the ways that we can do that is think through whether our regulations are, while providing appropriate investor protections, also clear and straightforward so that everybody can understand them and everybody can follow the rules of the road without necessarily having a close proximity to a lawyer or a large compliance program.

So I would look forward, if confirmed, to working with her to make sure—and her office—that all businesses are getting the capital that they need and getting the protections they need during this market turmoil.

Senator TESTER. Another question for both Ms. Crenshaw and Commissioner Peirce. Could you just give me, very briefly, what you have been focused on over the last 6 months or a year as a staff or commissioner?

Ms. PEIRCE. So the Commission has been quite busy over the past 6 months, but among the things that we have been focusing on is expanding the ability of the private markets to work to serve companies of all sizes. We have also been working on trying to strengthen the regulatory framework as it relates to equity market structure, and we have also been working on—I personally have been spending some time thinking about innovation, as I mentioned in my opening statement, trying to think about how we can develop a framework for digital assets that will give people the certainty they need to conduct innovation in the United States.

Ms. CRENSHAW. Over the past few months, when I wrapped up my time with Commissioner Jackson, we were working on the buybacks issue as well as the market structure issue, such as the transaction fee pilot. And then when Commissioner Jackson returned to New York I returned to the Office of Compliance and Examinations, and for the past several months have been working with the team there on a variety of inspections that are hopefully going to help make markets safer for investors.

Senator TESTER. OK. Ms. Crenshaw and Commissioner Peirce, you both have been critical of legislation from this Committee that has been signed into law. How will you work to implement regulations, including those that you may have been about outspoken about, but carry a congressional mandate?

Ms. PEIRCE. So when I worked on the Committee, 10 years ago, to the day, as Senator Brown mentioned, Dodd-Frank was passed, and I had a lot of concerns about Dodd-Frank. One piece of that law was security-based swap regulation, and that was something that fell within the purview of the SEC. When I got to the SEC, Chairman Clayton asked me to take the lead on getting that over the finish line. It was something that we were not done with and I thought it was important to implement the statute. And so I worked on that. It took a lot of my time and my staff's time, and I remain committed to listening to Congress. Having worked on the staff there I understand the importance of congressional mandates, regardless of whether they would be my optimal design or not.

Senator TESTER. OK. Ms. Crenshaw.

Ms. CRENSHAW. As Commissioner Peirce mentioned earlier in the testimony, most of the votes at the Commission are actually done on a bipartisan or even unanimous basis. So I would want to make sure that I am approaching every rule, if confirmed, and every enforcement case with that approach in mind. I would like to make sure that they are bipartisan and unanimous, if possible. And I would want to make sure that I am working with staff, even if it is something that I may not be agreeing with them on. But I want to reach that result, if possible.

Senator TESTER. Thank you, Mr. Chairman.

Chairman CRAPO. Thank you. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman. First of all, I want to thank all of our nominees for your willingness to serve.

Ms. Peirce, I would like to start by asking you a question about market structure. When it comes to market structure, I understand one reform that you would like to consider in the future would be to reform the circuit breakers that require stock exchanges to halt trading when prices move past a certain point. Can you tell us a little bit more about what your thinking is in this particular area?

Ms. PEIRCE. Sure. So the circuit breakers were put in place in anticipation of events, such as we saw this spring, and I think that they actually—the markets have worked remarkably well in a period of intense volatility and volume. And so I have been very pleased with that. And the circuit breakers have generally worked quite well, but I think that we might be able to make some tweaks so that they would work even better should another situation like the one that we experienced over the last several months occurs.

Now it would take time for us to figure out what to do, but one thing that may be a possibility is to try to work on the circuit breakers so that they do not trigger so quickly after opening in the morning. Because the purpose of a circuit breaker is to give the market a chance to think and sort through uncertainty, and if they have had that time to do that overnight, perhaps we do not need to have those circuit breakers triggered so early in the morning.

Senator ROUNDS. Thank you. Ms. Crenshaw, one concern I had early on the COVID-19 pandemic was whether or not our exchanges would be able to operate in New York, Chicago, and other cities in the event that widespread lockdown measures were put in place. Thankfully, our exchanges have operated remarkably well during the pandemic.

Looking back over the past few months, are there any important lessons learned from continuity of operations standpoint?

Ms. CRENSHAW. I think one of the things we need to make sure, from an Office of Compliance, Inspections, and Examinations perspective, is that the processes and procedures are in place so that these exchanges are ready to go. We have a group that oversees the exchanges and one of the things they look at is making sure that they have continuity, processes and procedures, and I think we need to continue to look at those with all possible crises in mind, making sure that they are able to telework, making sure that they have backup systems. And I would look forward to working with them to make sure that all of those processes and procedures are designed appropriately.

Senator ROUNDS. Thank you. Mr. Hauptman, I have concerns from some credit unions about the burden that capital rules like CECL and other regulatory standards pose. To that end, Chairman Hood said that CECL will do more harm than good, from a broad perspective. How do you view the capital structure for America's credit unions, and are there areas that the NCUA or Congress need to revisit?

Mr. HAUPTMAN. Yes, Senator. Thank you for that. I will say three things. One, my priority is capital, capital, capital, capital is the Holy Grail of regulation. Pulling in to this crisis the credit union system, as a whole, was well capitalized. They were significantly above what they are statutorily required to have, and that is good. And it is times like this when capital matters most. This is why we have it.

When it comes CECL, I am aware that there is a delay. The number one thing a regulator can do, because obviously the rule itself is up to Congress to change, or FASB, the number one thing they can do is if CECL goes into effect and they have to take write-downs on their assets, make sure that the regulators understand that their capital levels did not really just go down. They have to go out and raise a lot. If it goes into effect on January 1, 2022, let's say, their balance sheet on January 1 is not any worse than it was on December 31st. But things like CECL can make it appear it is worse.

So that is one concern I heard from the Arkansas credit unions and the others in the Cornerstone Credit League in Texas and Oklahoma, is even if we have to go forward with CECL, please understand and communicate to us that you get that our capital levels are not necessarily worse and our balance sheets are not worse off, just because they may look worse off when you take these expected credit losses.

And obviously what they say is the notion that a loan may not be repaid has been going on since the dawn of banking. But as a regulator you want to make sure you are communicating that you understand the changes they may have to make.

Senator ROUNDS. Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, Senator Rounds. Senator Menendez, are you with us?

[No response.]

Chairman CRAPO. I think Senator Menendez may be joining us soon. Senator Warner, are you with us?

[No response.]

Chairman CRAPO. I am going to go through the list here. Senator Warren.

[No response.]

Chairman CRAPO. Senator Cortez Masto.

Senator CORTEZ MASTO. I am here.

Chairman CRAPO. You may go ahead.

Senator CORTEZ MASTO. For some reason I am having difficult—oh, there it is.

Thank you so much. Let me just say congratulations on all of your nominations. Thank you for your willingness to serve, and I am excited for you and excited for all of your families.

But let me start with both Commissioner Peirce and Ms. Crenshaw on cryptocurrencies. I know the SEC has taken a position that direct regulation of bitcoin is not within its purview. However, the SEC has chosen to regulate certain cryptocurrency-related digital assets. For example, last week, former lobbyist and convicted felon, Jack Abramoff, pleaded guilty to misleading investors with a new cryptocurrency.

So my question both of you is, what are your concerns about potential fraud with cryptocurrencies, and where do you think the SEC's role is when it comes to addressing that fraud? And Commissioner Peirce, let me start with you.

Ms. PEIRCE. Thank you, Senator. I do think that we have seen a lot of fraud with a crypto label on it. Now some of it is just run-of-the-mill fraud where someone has no intention to create a crypto project. They just have an intention to steal people's money. And

often those are cast in a way that fits clearly within our mandate, because it is an offering—they are essentially raising money for what they say is a common enterprise, and they are making this representation. So it is clearly within our mandate.

I think one thing that we could do to improve the landscape is to set out clear guardrails and clear guidance about when something is a securities offering, or, as I have suggested, create some kind of a safe harbor that allows these initial coin offerings to happen, but allows them to happen with certain disclosures attendant and certain—people would have to identify themselves. And I think that would be a good way of separating the wheat from the chaff.

So I think enforcement is important but it is also important for us to put out clearer guidance.

Senator CORTEZ MASTO. And Ms. Crenshaw.

Ms. CRENSHAW. I think the cryptomarket is a young market, and with a young market there is necessarily a lot of risk. And so I think it is important to the degree that these are securities, which the Chairman, I think, has made an assessment on in certain cases, so to the degree they are securities, I think it is important that we are protecting investors and making sure we are holding folks accountable when they are fraudulent in this market. It is important to provide these protections so that the market is trusted and that it can grow and innovate over time. And I think the Chairman has done a good job in this area, in making sure that we are providing appropriate protections while letting the market innovate.

And to the degree that they are either currencies or commodities, I think we need to work with other agencies to make sure we are still providing those appropriate protections.

Senator CORTEZ MASTO. Thank you. Mr. Hauptman, I know you have an interest in digital currencies and blockchain technology. Do you have any specific goals related to distributed ledgers or digital currencies, if you are confirmed to the NCUA board of directors?

Mr. HAUPTMAN. I appreciate the question, Senator. First I do want to mention it has been a pleasure to work with your staff on the Subcommittee, as well, on anti-money-laundering reform.

When we had 88 million checks that were going to go out, paper checks, through the mail, with the stimulus payments, that would have been a great opportunity if we had, for example, a digital dollar. NCUA does not have a ton of oversight over that. But when we saw all those people desperately in need of that money—people with rent coming up, people with bills to pay—had we had digital currency it is possible that we could have a blockchain-based digital dollar and we could have gotten money to those people immediately and securely, with limits on fraud, much the same way if there is a disaster in another country we can deliver money to those folks much more quickly and in a much safer manner.

Senator CORTEZ MASTO. Thank you. I appreciate that. Let me jump back to Ms. Peirce. Last year I wrote a letter, with Senator Rounds, Van Hollen, and Smith, asking FINRA to limit the ability of broker-dealers and other financial professionals to inherit money from their clients. In response, FINRA proposed a rule banning

such potential abuse, and that rule was recently sent to the SEC, which is seeking comments on the proposed rule.

To the extent you can now, do you believe regulators should prohibit financial advisors from receiving requests from clients? So to the extent that you can now answer that question, or at least posit about it?

Ms. PEIRCE. Well, I cannot really comment because the rule is under review, but I will say that this is an area where it is so important for us to pay close attention, because so many seniors, especially, are very vulnerable. And I think anyone is going to be suspicious when a financial professional is inheriting money from a client. And so I think it is an area we need to work on. We have got excellent people at the Commission working on those kinds of things, and FINRA is committed to it as well. So I commit to working with you on that issue.

Senator Cortez Masto. Thank you very much. Mr. Chairman, thank you. Thank you all.

Chairman CRAPO. Thank you. Senator Kennedy.

Senator KENNEDY. Mr. Chairman?

Chairman CRAPO. Yes. I can hear you. Cannot see you.

Senator KENNEDY. Well, let me see if I can fix that. Can you see me now?

Chairman CRAPO. Yeah, we can now.

Senator KENNEDY. Great. If you would gavel loudly, Mr. Chairman, when I am done or close to being done with my time, because I cannot really see the clock that well.

Chairman CRAPO. I promise I will do it.

Senator KENNEDY. I thank you for that.

Captain Crenshaw—it is captain, is that right?

Ms. CRENSHAW. That is correct, Senator.

Senator KENNEDY. Captain, have you ever bought stock?

Ms. CRENSHAW. I have, Senator.

Senator KENNEDY. How long ago was that?

Ms. CRENSHAW. A fairly long time ago, Senator.

Senator KENNEDY. OK. What did you do before you bought that stock? Did you research it?

Ms. CRENSHAW. Probably not thoroughly, Senator.

Senator KENNEDY. OK. Did you read the prospectus?

Ms. CRENSHAW. Probably not.

Senator KENNEDY. OK. Do you have any idea how much it costs to put together a prospectus?

Ms. CRENSHAW. I know with the printing costs it is not an inexpensive process.

Senator KENNEDY. What about the legal fees?

Ms. CRENSHAW. Given the law firm rates around here I imagine it is fairly expensive as well.

Senator KENNEDY. I am not arguing against the idea of a prospectus. I just do not think most retail investors read a prospectus. They, in doing their due diligence, may download it. But it is long. It is tedious reading. If we really wanted to inform retail investors, and some institutional investors, would we not require a prospectus to be drafted in such a way that it is more accessible to retail purchasers of equities?

Ms. CRENSHAW. Can you hear me?

Senator KENNEDY. Can you hear me?

Ms. CRENSHAW. Yes. I can hear you.

Senator KENNEDY. Did you hear my question?

Ms. CRENSHAW. I did. Yes.

Ms. PEIRCE. Can you hear me?

Senator KENNEDY. I can hear you. Yes, ma'am.

Ms. CRENSHAW. I know the Division of Investment Management is undertaking a project to address just that question, called the Retail Investor Experience, and they are working with investors to make sure that the disclosures, while appropriate for all levels of investors and providing the information that is critical to anyone who may want it, they are working to make sure that these disclosures are less daunting and much more accessible.

Senator KENNEDY. When do you think they will have that ready?

Ms. CRENSHAW. I do not know the timing of that, Senator. You would have to ask the Chairman that. But I know that they are working on that project and I would look forward to working on that with them, if confirmed.

Senator KENNEDY. Well, I am not suggesting that we do not need full disclosure. Quite the contrary. I think that separates our markets from a lot of markets in the world. I just do not think that retail investors benefit as much as they could if we figured out a way to make it more accessible, not physically accessible but accessible in terms of the knowledge that our law requires to be conveyed.

Member Peirce—am I saying that right?

Ms. PEIRCE. You are.

Senator KENNEDY. Commissioner, do you think equities that are owned by foreign companies, whether or not they are subsidized by their foreign Governments, should be allowed to flaunt our audit laws?

Ms. PEIRCE. If they are listed in the United States I think it is really important that they be subject to the same requirements. It is an area that we have been working on with the PCAOB for quite a long time now, and it has been one of the—

Senator KENNEDY. I do not have much time left. And look, I am a big Jay Clayton fan, but why haven't we done more about it?

Ms. PEIRCE. Well, I think that it is—there are a couple of things to do. One is to make sure that the disclosure is there about the risks of investing abroad, in foreign companies.

Senator KENNEDY. Right. But why—look, I only have 20 seconds. The Senate has passed a bill that says if you are a foreign company you have to comply with the same audit requirements as everybody else. And it has passed the Senate. Wall Street has unleashed hell, lobbying against it in the House, and that makes no sense to me. And why hasn't the Commission stepped up in a more vocal manner?

Ms. PEIRCE. Well, just a couple of weeks ago we had an emerging markets roundtable at which this was the very discussion, and I think some productive suggestions came out of that. And so it is something that certainly is on our minds, and we have been quite clear about the inability for us to audit—to oversee the work of auditors in certain jurisdictions.

Senator KENNEDY. Thank you, Mr. Chairman.

Chairman CRAPO. Thank you. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman. Commissioner Peirce and Ms. Crenshaw, I want to start with an issue I raised with Chair Clayton last time he was before the Committee. I have been increasingly concerned about the ability of foreign actors to manipulate U.S. companies through their investments, particularly in the media and technology sectors. And given the stress in today's economic environment they are even more vulnerable to predatory practices and behavior by foreign investors looking to gain a foothold in the U.S. media industry while skirting our transparency requirements.

Section 13(d) of the Securities and Exchange Act of 1934 requires investors who become the beneficial owners of more than 5 percent of an issuer's equity securities to report certain identifying information to the SEC. But if undisclosed, or disclosed without sufficient information, such ownership stakes could undermine the free flow of information to the American public.

How do each of you believe the SEC should monitor equity markets to ensure that foreign investors are not accumulating significant shares in public companies, especially in the media and technology sectors, without filing the requisite disclosures?

Ms. PEIRCE. That is an issue that we deal with both through our enforcement and our Division of Corporation Finance and its review of issuers. That said, it can be a very difficult thing to track, and I agree with you that it is really important that we have transparency. That is why those rules are in place. So we have brought some enforcement actions, and I think it is an area where whistleblowers also could be valuable in pointing us to potential violations.

Senator MENENDEZ. Ms. Crenshaw.

Ms. CRENSHAW. Thank you, Senator. I agree with your concern and I agree, generally, with what Commissioner Peirce said. I do think this is a rule that we have not looked at in a very long time, and to the degree it is a rule that is not operating appropriately I would be open to working with your office, if confirmed, and the staff to think through ways that we can address those concerns a little bit better.

Senator MENENDEZ. Well, I appreciate both of your answers, and Commissioner, I appreciate your forthrightness in terms of saying it is a difficult area. I know, for example, of one large Hispanic media broadcasting system that had a series of foreign investors that, unbeknownst to the company, they did not disclose to the SEC. And, of course, then you have the FCC obligations to disclose, but you cannot disclose it if you do not know, from the SEC filings, that someone has made, you know, investments beyond, I think it is the 5 percent requirement.

And so, therefore, you find the ability of a foreign entity to try to take over, and media companies in the United States with then the ability to try to influence the results of what they are broadcasting. And so I think we need to find a way to beef up the abilities to do this.

Commissioner Peirce, in your experience do you think that the Commission has the ability to independently verify the information

in a Section 13(d) filing, or to verify whether a foreign entity should have filed a 13(d) disclosure?

Ms. PEIRCE. Realistically, we have a lot of issuers, and so—and there are lots of filings. So, realistically, we cannot verify everything that is in every filing. As Ms. Crenshaw said, I would be happy to work with your office and think through ways that we could have better information. I also hope that you would convey the information about the one that you are aware of to me or others at the SEC, and I would happy to work with you on that.

Senator MENENDEZ. Well, thank you. We will follow up. We will follow up with you.

Let me ask you, Commissioner Peirce. Recent reports from the New York Stock Exchange and the CBOE show that off-exchange trading rose to a record 42 percent of all volume during the COVID pandemic. During this crisis, when the markets need greater transparency and price discovery, we have never, in history, had less trading taking place on exchanges. Dark markets are less regulated and provide little transparency.

So Commissioner, are you concerned with this trend in off-exchange trading, and what is the SEC doing to address it?

Ms. PEIRCE. Our exchanges are very important for transparency of our equity markets. We have taken seriously the concerns that have been raised about off-exchange trading, and we passed—we adopted a rule, regulation, that deals with alternative trading systems and disclosures and transparency around them. And I am certainly open to thinking about other ways that we can increase transparency and make sure that our equity markets are able to operate as efficiently as possible.

Senator MENENDEZ. Mr. Chairman, may I have your indulgence for one question to Mr. Hauptman?

Chairman CRAPO. Yes, you may.

Senator MENENDEZ. Thank you very much. Mr. Hauptman, credit unions have a broad and diverse membership, and the NCUA counts diversity and inclusion among the agency's core values. But still not a day goes by when we do not see a story about a person of color being discriminated against by a financial institution, whether that is being unfairly denied a mortgage or having the police called on them by bank employees on the unfounded suspicion that they are trying to cash a fake check.

So share with me and the members of the Committee what personal or professional experiences do you bring to NCUA that will enable you to advance diversity, inclusion, and nondiscrimination within the credit union system.

Mr. HAUPTMAN. Thank you, Senator. Obviously an extraordinarily important topic.

First of all, you have to enforce the laws on the books, and we will do that vigorously—Fair Housing Act, Equal Credit Opportunity Act, Fair Credit Reporting Act—and, where appropriate, take appropriate action.

If I could just step back a second, big-picture my view on this, is no entity like NCUA or a credit union or this country can fully succeed unless we make use of all of the talent around us. We are not going to be as prosperous, as safe, and a more fair society unless we use all of the talent, not just some of it. That is fair for

those who do not have the proper opportunity today, but it is also better for the rest of us.

So that is the mentality I am taking into it, including looking at ways to start more credit unions. There were only two last year. One was a minority deposit institution, and that was good to see. But I want to do a top-to-bottom review of what are the pain points. Why did it take so long to start credit unions, and possibly get more minority depository institutions.

Last, I would like to expand, if it works well, the Second Chance Initiative they have done at NCUA. People with minor criminal convictions years ago having the chance. That is an example right there, and I have seen it with friends and, you know, people from my high school. That has changed their entire trajectory, one minor conviction when they were 19. So we would like to see how that works out and expand that. That is an example of an untapped pool of talent this country would be better off using.

Senator MENENDEZ. Thank you. Thank you, Mr. Chairman, for your courtesy.

Chairman CRAPO. Thank you. We have four Senators who have checked in but I do not see. I am going to go through and see if any of them are online with us.

Senator Warner.

[No response.]

Chairman CRAPO. Senator Warren.

[No response.]

Chairman CRAPO. Senator Van Hollen.

[No response.]

Chairman CRAPO. Senator Jones.

[No response.]

Chairman CRAPO. I think they may have all had to go to other hearings or other business.

So that concludes the questioning. Senator Brown, did you want to make a statement?

Senator WARREN. Mr. Chairman.

Chairman CRAPO. Oh wait. Senator Warren. Yes, go ahead.

Senator WARREN. Thank you, Mr. Chairman.

Chairman CRAPO. I am seeing more show up too. Go ahead now.

Senator WARREN. OK. I will go ahead and go. Thank you.

So later today Republicans on this Committee plan to confirm an unqualified nominee to the Federal Reserve. They will do so 10 years to the day after President Obama signed Dodd-Frank into law to protect our financial system. Confirming Judy Shelton to the Federal Reserve is a mistake, and it will endanger our economy, and I will be voting against her confirmation, and I urge my colleagues to do the same.

President Trump's total failure to protect this country from a public health crisis has now caused a devastating economic crisis. But while workers and tenants and small businesses are still struggling, private equity companies are making big money and are raking in profits by taking over nursing homes, department stores, newspapers, grocery stores. They bleed these companies dry, they put workers out of a job, and they put our economy at risk while they do it.

The SEC is supposed to protect our economy from these risks, and I want to understand how both of you think about the threats that private equity industry poses to workers and to the economy.

So Ms. Crenshaw, I would like to start with you. When private equity firms gobble up other businesses they used highly leveraged loans to do it, and that means they are loading up the companies they control with debt. During an economic downturn, what are the risks to the financial system if these companies start to fail?

Ms. CRENSHAW. Senator, I share your concern in this area, and one of the things that concerns me, and I think poses the greatest risk, is what we do not necessarily know. We do not have the data to know between funds, insurance companies, or banks who holds what in these products. And I think it is absolutely crucial that we understand that data so we can assess the market and appropriately determine how to appropriately protect investors from the spillover effects.

Senator WARREN. All right. So thank you very much. You know, Dodd-Frank directed the SEC to write rules to address these risks, and in 2014, the SEC proposed requiring private equity firms to keep some skin in the game when they make risky bets. Unfortunately, the courts overturned these rules, but my Stop Wall Street Looting Act would put risk retention requirements back in place.

OK, but that is about another bill. Let's talk about something the SEC could do right now to address this problem, without any new legislation. Currently, private equity disclose the amount of debt that their companies have taken on, the fees they charge, and the performance of their investments, but all that terrific information is kept secret. That means that investors and the broader public are left in the dark about risks in this industry.

So Ms. Crenshaw, do you believe that requiring private equity funds to disclose more information about their investments would help protect both the economy and the workers, and help make the market more efficient?

Ms. CRENSHAW. I think the SEC has long said that only through full and fair disclosures can investors appropriately assess the markets and adequately invest their capital and allocate their capital. And so I think disclosure would be important to investors.

Senator WARREN. Good. Well, I am glad to hear it. You know, last month the SEC itself acknowledged that there are widespread problems even in the limited private equity disclosures that do exist.

Commissioner Peirce, what about you? Do you agree that private equity companies should have to disclose basic information about the risks of their investments, the fees they charge, and how well those investments are performing?

Ms. PEIRCE. The investors in private equity funds, to the extent that they share the concerns that you have, have a fair amount of leverage in terms of trying to get the disclosure they want. And so given the way the market is structured, I think it is less important for us to focus on private equity disclosures and more important to focus on the disclosures that are reaching typical retail investors.

Senator WARREN. And I have to say, Commissioner Peirce, I am not surprised to hear that you are not interested in requiring more disclosure from the private equity industry. Nothing in your record

suggests that you are willing to take on powerful interests to protect either investors or workers. That is why I think it would be a mistake to confirm you for another term.

The SEC's job is to protect investors, to maintain fair, orderly, and efficient markets, and to facilitate capital formation. That is a direct quote. And that means a Commission that will not let private equity funds loot American businesses. It means a Commission that is actually committed to transparency. It means an SEC that has the courage to stand up to private equity. That is what we need.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman. I appreciate you having this hearing.

Let me start by saying that I agree with Senator Warren, Senator Brown, and a number of my Democratic colleagues on the nominee, Judy Shelton, that we will vote on this afternoon. I found her—personally, and enjoyed meeting her, but I do feel her views at this moment in time are not right for the independence of the Fed.

I want to move to Ms. Shelton—I am sorry, Ms. Crenshaw. I had some earlier discussions with Ms. Crenshaw. As you probably recall, I talked about a GAO report that I had requested about ESG measurements. Now the report found that 12 of the 14 institutional investors that were interviewed use ESG metrics, but there is an extraordinarily wide variety of information that is provided.

As a matter of fact, we have seen enormous numbers of both funds and companies say they are interested in ESG standards, metrics, value this kind of disclosure. But as the GAO report pointed out, even when it came to something as basic as measurement of carbon dioxide emissions, there was a whole series of different standards used. And now my colleagues may not believe that carbon emissions are contributing to climate change or not, but it would seem to me if investors want this information there ought to be some ability to standardize what these metrics look like.

We also know that the Investor Advisory Subcommittee at the SEC said that there are a lot of business risks and decisions and strategies that stand upon ESG factors, and I know you are not going to want to prejudge something that may come before the Commission, but when we are looking at something that the investor community says this is important, don't you think we need some level of standardization on these kinds of standards, rather than the patchwork that we have right now?

Ms. Crenshaw, would you address that issue?

Ms. CRENSHAW. Senator, yes, and I agree with you and I think investors are looking for ESG metrics. The largest asset managers in the world are incorporating ESG factors into their comprehensive risk programs, and I think we need to think this through. We have not looked at this area in a while, and I think we at the SEC need to think through how best to provide the information that investors are looking for, and that is information that is comparable and that is accessible to investors. And I think we need to do that through a roundtable or think through additional guidance, and I

would look forward, if confirmed, to working with your office and the staff on the best way to do that.

Senator WARNER. And I would simply like to say, since I would argue you would need to move somewhat aggressively. You know, the Europeans are moving to formalize these standards. If we did nothing this would be one more example of why I think America is giving its long-term leadership.

So I would hope you would consider even advocating for a formal task force. I do not think we would want a roundtable. Do you want to add any other comments? I have got one or two more questions.

Let me also—Mr. Chairman, I do not see my timeline. How much time do I have left?

Chairman CRAPO. You have 1 minute and 20 seconds.

Senator WARNER. All right. One of the areas that I particularly also focused on is human capital, disclosure of human capital management. I think the pandemic has pointed out the need for that public company reporting on human capital. I know the SEC has moved from this area already. Ms. Crenshaw, would you very briefly tell me your thoughts on human capital disclosures?

Ms. CRENSHAW. Yes, Senator, being careful not to prejudge a rule that I might be asked to vote on, if confirmed. I do think, generally, that human capital disclosures are information that investors need and want. This is information that goes to the long-term financial growth of companies. And again, I think this is an area where we need to make sure that we are providing investors with information that is both accessible and comparable, and to the extent we can use quantitative factors here, I think that would be appropriate.

Senator WARNER. Thank you. I know my time is about to expire. I will put my questions in for the record. Before I yield, though, I do want to comment Mr. Kyle Hauptman for his work with our office and a number of others on, I think, very significant legislation, the anti-money-laundering legislation, that you, Mr. Chairman, and Ranking Member Brown have been such great leaders on. And I just want to say to Kyle, thank you for your good work in working with our office, and if you are confirmed I hope you will bring that same spirit of collaboration and bipartisanship to the NCUA.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, Senator. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman and Ranking Member Brown, and to the witnesses today. Let me start with Mr. Hauptman, and I have a question on setting caps on interest rates to prevent predatory lending. As you know, credit unions have traditionally served as safe institutions for their members to borrow at reasonable rates. Some time ago, the Congress enacted legislation to protect military families, active duty military and their families from predatory rates and interest rate gouging. We established a 36 percent annual cap on loans to active duty service members.

Senator Brown and others and I have introduced legislation to extend those protections to other Americans, one for the long haul but also one during this pandemic, when we see lots of predatory lending abuses. Would you support the idea of establishing a 36

percent interest rate cap during this pandemic to prevent predatory lending abuses?

Mr. HAUPTMAN. Thank you, Senator. Obviously an important topic for anyone that has been in a cash crunch. And I am aware of the situation where just outside many military bases you see payday loan places and pawn shops, et cetera.

At NCUA, the only ability we will have is working to make sure there are better options. The interest rates are set by statute and then they have their payday alternative product, which is 10 points higher at 28. I think the regulatory policy I bring to the table here is a better deal. In the case of extraordinarily high interest loans, the main thing is to provide better options, fight fire with fire, when somebody has an extraordinarily high interest loan and their credit union can give them one to refinance that and get out of that.

So the ability I would have at NCUA is to make sure that, number one, there are better alternatives. They have to be significantly better or no one will use them. They have to better products at lower prices. And second of all—

Senator VAN HOLLEN. Mr. Hauptman, my time is limited.

Mr. HAUPTMAN. Sure.

Senator VAN HOLLEN. Do you support the law that was passed by Congress to protect military families?

Mr. HAUPTMAN. Matters before Congress are probably best left to Congress, but at NCUA you can be sure that all those military members, and there are many in credit unions, will have better options than the type of loan—

Senator VAN HOLLEN. I know, but you have an advocacy role as well, it seems to me, to, you know, protect your members.

Mr. HAUPTMAN. Sure.

Senator VAN HOLLEN. And, you know, one way to protect your members is to make sure credit unions are offering reasonable rates. The other is to make sure that there are not others out there that are charging outrageous, excessive rates. So it is a pretty simple question. Would you support our proposal to extend to others around the country the protections that we, as a country, currently extend to military families when it comes to excessive interest rates?

Mr. HAUPTMAN. Yeah. I should not comment on Congress, but you can count on me to make sure there are much better options and lower price options than what you are talking about. That includes financial literacy and lower fees across the board, so they do not get in this cash crunch to start with.

Senator VAN HOLLEN. Right. Well, one way to do it is to make it—one way to do it is to make sure that those outrageous practices are banned.

Let me ask Commissioner Peirce a question with respect to the proposed advisory rule, and I am not going to ask you the substance of it because I know it is a pending matter. But when we had the Chairman before the Committee, Chairman Clayton, I asked him about comments he had made about how the proposed rule was supported by what he described as Main Street investors. And it turned out that his comments were based on letters that he had received from people claiming to be Main Street investors but,

in fact, they all were manufactured by a front group called 60 Plus. This is a dark money group, a secret money group, and it turned out that it was entirely fabricated.

So my question to you is, do you have in the record before you comments from genuine Main Street investors, the mom-and-pops, because I can tell you, when it comes to this proxy rule, I have not heard from any sort of mom-and-pop investors about why the proposed rule is something that would be helpful to them. Have you?

Ms. PEIRCE. Well, we have got a record that is chock full of comments representing a wide variety of viewpoints. I think one problem with this particular rule, with this particular area, is that you have a few extremely large shareholders who often operate to the disadvantage of mom-and-pop shareholders, the kind that you are——

Senator VAN HOLLEN. Yeah, so Commissioner Peirce, with respect, my question was pretty simple, right, because Chairman Clayton used what turned out to be fabricated letters from Main Street to argue that he was proposing to protect Main Street investors. I have a simple question. In your record before you, can you identify for us today any comments from genuine Main Street investors about this rule?

Ms. PEIRCE. I am happy to get back to you on identifying particular letters, if that is something that you would like me to do. Obviously, the integrity of our comment process is very important, and so that is something that we rely on commenters to communicate their views with us. And we get comments from a wide variety of perspectives. I am happy to get back to you on this particular rulemaking if you would like.

Senator VAN HOLLEN. I would appreciate that, because I think the reason the Chairman had to settle on what turned out to be manufactured comments was there were not any authentic ones. But I appreciate that. Thank you.

Chairman CRAPO. Thank you. That concludes the Senators. I understand, Senator Brown, you would like to ask one more question?

Senator BROWN. On that I want to thank Senator Van Hollen. I think his question was really important, and we will all be awaiting your response, Ms. Peirce, your response in writing to what Senator Van Hollen asked. So thank you.

I had a real quick question, Mr. Hauptman. You talked about technology. Give me an example of what you have in mind.

Mr. HAUPTMAN. Well, you know, it has been a nationwide, almost a worldwide experiment in how we do things during a pandemic. For example, this hearing is online, and prior to March we had never done that before. They have done exams virtually. It is possible that could save all parties a little bit of money, or do some of it virtually, so that is an option.

But I would mention 3 years ago they passed a bill, I think it was Senator Scott's, the MOBILE Act, to be able to open an account online, be able to upload your identification information. That was very helpful during the pandemic, when a lot of people did not want to physically go to a bank or the lobby may have been closed.

So things like that. Again, the only maybe silver lining from this pandemic is we have done a lot of experiments and some of these

things, like perhaps a virtual examination or opening an account online or e-signatures and verifications, some of these things may be useful post pandemic.

Senator BROWN. OK. Well, thank you. It raises some concerns, and I appreciate your response. But so often technology is used for predatory behavior with technology companies and new innovative products just exploiting workers, especially low-wage workers, when we know that financial services does not really work very hard to reach the underserved. So I am very concerned about your thoughts there.

Last comment, Mr. Chairman, and I thank all three witnesses today. I hope our nominees state carefully about how these agencies enforce the law, the two agencies to which you are nominated, and hold bad actors, including management, accountable. It is not enough to talk about strong enforcement and individual accountability only when you are in front of the Banking and Housing Committee. Not only is there an important deterrent—not only is it a very important deterrent—it signals that the abuse of customers, the abuse of workers, the abuse of other stakeholders will not be tolerated. I hope that you all remember that, especially after you are confirmed.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, Senator Brown, and that concludes the questioning for the hearing today. To our witnesses—well, actually, to our Senators, any questions for the record are due this Thursday, and I asking our witnesses to please respond to those questions by Monday so that we can move quickly.

With that, again, thank you very much for attending this hearing and for your willingness to serve, and this hearing is adjourned.

[Whereupon, at 11:35 a.m., the hearing was adjourned.]

[Prepared statements, biographical sketches of nominees, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN MIKE CRAPO

This morning, we will hear testimony on the nominations of The Honorable Hester Peirce, of Ohio, to be a Member of the Securities and Exchange Commission; Ms. Caroline Crenshaw, of the District of Columbia, to be a Member of the Securities and Exchange Commission; and Mr. Kyle Hauptman, of Maine, to be a Member of the National Credit Union Administration Board.

Welcome and congratulations on your nominations to these important positions. Commissioner Peirce and Ms. Crenshaw have both been nominated to serve as SEC Commissioners.

The SEC is charged with an important mission to protect investors; maintain fair, orderly, and efficient markets; facilitate capital formation; and enforce securities laws.

I commend Commissioner Peirce and her colleagues at the SEC for their quick and decisive response to the current COVID-19 pandemic.

The SEC has successfully balanced the emergency response to COVID-19 while continuing to maintain fundamental operations, such as rulemaking initiatives, conducting risk-based inspections, bringing enforcement actions, and reviewing issuer and fund filings.

I encourage the SEC to continue these efforts, including advancing important rulemaking efforts related to capital formation and corporate governance.

Commissioner Peirce is highly qualified for the position, previously serving as a Senior Counsel at this Committee and currently serving as an SEC Commissioner since January 2018.

Next, we have Ms. Caroline Crenshaw.

Ms. Crenshaw has worked at the SEC since 2013, working in the Office of Compliance Inspections and Examinations, the Division of Investment Management, and as Counsel to Commissioners Kara Stein and Robert Jackson.

In addition to her work at the SEC, she is a captain in the U.S. Army Reserve Judge Advocate General's Corps.

Ms. Crenshaw, we thank you for your service.

Turning to Mr. Kyle Hauptman, who has been nominated to the Board of the National Credit Union Administration.

The NCUA plays a critical role in overseeing and insuring a major segment of our Nation's community financial institutions: federally insured credit unions.

Mr. Hauptman is well prepared to join the NCUA Board thanks to his prior Government and private sector experience.

Mr. Hauptman has served as the Economic Policy Advisor to Senator Tom Cotton since 2017.

Mr. Hauptman also worked on S. 2155, the Economic Growth, Regulatory Relief, and Consumer Protection Act, which contained several important provisions that provided regulatory flexibility and relief for credit unions.

Before his Government service, Mr. Hauptman had a career in the financial services industry, where he developed expertise managing liquidity and credit- and interest-rate risk in fixed-income portfolios.

In the coming months, both the SEC and NCUA will be on the front lines helping consumers, retail investors, and businesses of all sizes recover from the economic impacts of the COVID-19 emergency.

If confirmed, I look forward to working with each of these nominees on many important issues within their respective policy areas.

Congratulations again on your nominations, and I thank you and your families for your willingness to serve.

PREPARED STATEMENT OF SENATOR SHERROD BROWN

Thank you, Chairman Crapo, for holding today's nomination hearing.

First, I want to take a brief moment to remember my friend and colleague, Representative John Lewis. Let us honor his legacy by following his example of leadership, courage, and unrelenting fight for justice.

Welcome to today's nominees. Congratulations to the three of you and your families. The Committee will consider two nominees to the Securities and Exchange Commission—Commissioner Hester Peirce for a second term, and Ms. Caroline Crenshaw, and Mr. Kyle Hauptman as a nominee to be a Board Member of the National Credit Union Administration.

Today also marks the 10-year anniversary of the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act. We passed Wall Street reform to prevent another financial crisis.

Right now, we face an even greater, more complex public health and economic crisis. Families are making impossible decisions about how to pay their rent and put food on the kitchen table, or are grieving the loss of a mother or a father or a child. And we know one of this pandemic's tragedies is people dying alone.

It's black and brown Americans disproportionately affected—working on the front lines to get us through this and helping to save lives, while grieving lost ones.

Wall Street reform was meant to prevent catastrophe in our financial system. We need to aim higher than that today—yet Wall Street has spent years trying to dismantle the basic, important protections put in place through Dodd-Frank.

And Republicans and the Trump administration have been all too happy to oblige. It didn't take long for Wall Street to recover from the crisis. They were making record profits while refusing to pay their workers a living wage. This ultimately caused the wealth gap to grow further.

The current coronavirus crisis is showing us what happens when we don't protect working Americans. We can't leave them behind again.

And leadership matters. We see that every day—over 140,000 Americans dead on the President's watch. We're just 5 percent of the world's population, yet we have 30 percent of the deaths. That's not because we don't have good doctors and smart scientists and hard workers. It's because of leadership.

And those who this body confirms to leadership posts also matter.

All of the nominees, if confirmed, can support and forward policies that protect these working families—families who are consumers and investors and credit union members. You can encourage companies and credit unions to offer fair products to Americans left out of our financial system and make sure our markets and economy work for everyone.

The question facing us today is: will you show that leadership and make those choices?

If confirmed, Ms. Peirce would continue her work as a Commissioner for 5 more years and further her commitment to public service. Ms. Crenshaw brings the experience of working for the last two Democratic Commissioners, fighting for investors. Her continued service in the military allows her to bring a very different perspective to the table. If confirmed, she would be the first Commissioner in modern times to be in the active reserve—joining a handful of Commissioners over the history of the SEC who have served in the Armed Forces.

Commissioner Peirce and Ms. Crenshaw, you will be called upon to tackle market swings and investment scams related to the pandemic, and you must also keep your eyes on existing problems that are getting worse.

As the biggest companies, and banks in particular, have grown and become more powerful, we've seen corporate executives pay themselves with stock buybacks while laying off workers, cutting their pay, and underinvesting in their communities—all while avoiding any accountability.

The SEC has a role in addressing each of these issues.

Executives must be responsible to stakeholders, including workers and communities. That means the SEC shouldn't be changing its rules if it will take away smaller investors' ability to hold management accountable and raise important issues to other shareholders. Shareholder democracy isn't just for the big guys.

The COVID pandemic has also shown how important essential workers are to our economy and how little information companies disclose about their workers. The public needs more information about how a company engages with its workers, because that helps investors understand how that company will deal with a crisis.

And soon enough, corporate executives will want to reward themselves and their biggest investors again with stock buybacks. The safe harbor for stock buybacks has barely been touched in 40 years, but it seems investor and market protections are chipped away at year after year.

When we've seen companies spend as much as 100 percent of their profits on their own stock, instead of capital investments or workers' wages, it's clear that stock buyback rules need an overhaul.

The COVID pandemic has also shown us how important it is to have local financial institutions that serve their communities. We've seen credit unions—like the ones in my home State of Ohio—work with their members to get through this crisis.

The NCUA is key to making sure that our credit unions are resilient in good times and bad.

Yet the NCUA under the Trump administration has been chipping away at the very protections we put in place after the last financial crisis—rules that protect homeowners and that set strong capital and loan reserve standards that allow credit unions to lend in their communities during a downturn, much like the one we are facing right now.

Mr. Hauptman was a trader at Lehman Brothers when it failed, accelerating the financial crisis. You'd think he'd understand what a financial crisis can mean, yet he has spent his career railing against the Dodd-Frank Act.

Credit unions were created when other financial institutions weren't serving all their customers, and we've often seen them help those that big banks leave behind, including workers, including black and brown communities. Now is the time to implement even stronger protections that safeguard consumers and our financial system. If confirmed to the NCUA Board, Mr. Hauptman will need to make sure that the credit union system continues to serve these communities, which means doing more to protect credit union members, not rolling back regulations.

Mr. Hauptman has no credit union experience. He says he wants this job because people who love their financial institution are usually credit union members. But being glad that credit unions serve their customers isn't a reason that he is qualified to be one of the three top credit union regulators, it means he should be a credit union customer.

Later today, this Committee will mark up the nomination of Judy Shelton to be a member of the Federal Reserve Board. Even before the pandemic, my colleagues and I were concerned about Dr. Shelton's qualifications and commitment to helping working families, and her independence from the President.

She has advocated for failed Depression-era policies like a return to the gold standard and the removal of deposit insurance. And, at her nomination hearing, she failed to explain how she would handle an economic crisis.

That hypothetical economic crisis is now a reality, but we have no idea how Dr. Shelton would respond.

This is why it is so important to carefully evaluate nominees—based on their record, experience, and service to the American people—that is who you all ultimately serve.

A regulator's job is not to do favors for Wall Street firms and corporate interest groups or revive debunked economic theories. We entrust regulators to make sure that all Americans can prosper in a safe financial system and a fair economy. Today we need to hear from you how you will help and protect the people that make our economy work.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF HESTER PEIRCE

TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION

JULY 21, 2020

Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you for considering my nomination to be a member of the Securities and Exchange Commission. Having served as a Commissioner for 2½ years, I am honored that the President has nominated me to serve another term. If confirmed, I look forward to using the next 5 years—alongside the dedicated, experienced SEC staff—to unleash the power of our securities markets in order to brighten more children's futures, build more Americans' retirement nest eggs, transform more communities across the Nation, and rebuild an economy weakened by COVID. I am delighted about the possibility of serving with Caroline Crenshaw, whose experience at the Commission, in the military, and in private practice would enrich our deliberations as a Commission.

I have spent the last 20 years working on financial regulation. Part of that time was spent working for Senator Shelby on this Committee, and more than half of that time has been at the SEC. The agency has been extremely productive under the effective leadership of Chairman Jay Clayton. I have enjoyed helping to carry out his regulatory, compliance, and enforcement agenda.

On the regulatory front, we have enhanced retail investor protection by, among other things, codifying a regulatory framework for exchange-traded funds, adopting a best interest standard for retail brokers, and streamlining variable product disclosures. We also have applied a benefit-cost lens to public company regulatory obligations, initiated changes to equity market structure so it can serve investors and companies of all sizes, and scaled regulatory requirements for small entities. We have worked—with urging from me, the ever vocal Midwesterner—to streamline the capital raising process for small companies and entrepreneurs all across the country, not just on the coasts. We also have provided temporary relief for firms adjusting to the work-from-home environment and to small businesses trying to raise funds to survive the COVID crisis.

An integral complement to our regulatory work is the Commission's compliance function—which includes inspecting firms and engaging with them as they seek to apply the rules to their unique facts and circumstances. I have supported cooperation with other regulators and compliance personnel at registered entities to maximize our collective coverage and effectiveness. I also have advocated taking advantage of new technologies in overseeing the markets, with due consideration for legitimate concerns about data protection and over-surveillance.

On the enforcement side, we have brought charges against entities, large and small, and individuals for a wide range of securities violations. Most recently, we have gone after securities violators hiding behind purported COVID-19 cures. Human nature being what it is, there is no dearth of bad conduct. Consequently, I have worked to focus our enforcement resources where they can make the most difference for investors and our markets.

Collaboration with domestic and international colleagues runs through everything the Commission does. I had the opportunity to work with Commissioner Brian Quintenz of the Commodity Futures Trading Commission as we stood up our Dodd-Frank security-based swap regulatory regime. On the same issue, I cooperated with international counterparts to minimize market disruption and conserve regulatory resources. As the Commission's representative on one of the Financial Stability Board's Standing Committees, I have supported sharing information and conducting joint analyses, but also have emphasized that decisions about how to regulate the U.S. markets need to be made here at home.

One concern I had going into the job was the difficulty regulatory agencies have dealing appropriately with innovation in and disruption of the industries they regulate. This problem is an institutional one—large bureaucratic organizations, whether public or private, do not handle change particularly well. I know, however, that the Commission can do better. If confirmed, in addition to continuing my work on strengthening the regulatory framework, I will redouble my efforts to create a more welcoming environment for innovation and new entrants. If the Commission takes up that challenge with the necessary seriousness and alacrity, our capital markets will remain dynamic, vibrant, and preeminent.

Thank you for considering my nomination, and I would be happy to answer your questions.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name:

Peirce

Hester

Maria

Position to which nominated: Commissioner, Securities and Exchange Commission**Date of nomination:****Date of birth:** 12 October 1970**Place of birth:** Cleveland, Ohio**Marital Status:** Single, never married**Full name of spouse:** N/A**Name and ages of children:** N/A**Education:****Institution****Dates
attended****Degrees
received****Dates of
degrees**

Yale Law School

Fall 1994-Spring 1997

JD

June 1997

Technical University of Vienna

Fall 1993-Spring 1994

N/A

N/A

Case Western Reserve University

Fall 1989-Spring 1993

BA

May 1993

Mayfield High School

Fall 1985-Spring 1988

High School

June 1988

USDA Graduate School

2000-2001

N/A

N/A

**Honors
and awards:**

List below all scholarships, fellowships, honorary degrees, military medals, honors society memberships and any other special recognitions for outstanding service or achievement.

Fulbright Scholarship, Austria 1993-1994

College Awards

- Phi Beta Kappa
- Grawemeyer Scholarship for Study in Germany
- McMyler Award for Economics
- Barloon Award for Economics
- Kilpatrick Scholar/Athlete Award,
- Folberth Prize for German
- Grawemeyer Award for Research in Germany

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office	Dates
Investor Advisory Committee	Member	2014 to 2017 (inactive during prior nominations to SEC)
District of Columbia Bar	Member	1999 to Present
District of Columbia Bar Small and Emerging Business Committee of the Corporation, Finance, and Securities Law Section	Co-Chairman	2014-2015
Ohio Bar	Member (inactive currently)	1998-Present (Inactive Status: April 23, 1998 to October 15, 1998 and September 1, 1999 to Present)
Federalist Society	Member	1997, 2006, 2011 to Present
Weekly Bible Study Group	Co-leader	2013 to Present
Rockville Bible Fellowship	Member	1998 to Present
American Institute for Economic Research	Member	2000-2008
Literacy Volunteers of America	Literacy Volunteer	2002-2006
George Washington University Hospital Volunteer Program	Volunteer	2000 (est.)-2002 (est.)
American Council on Germany	Member	2007 to Present
Concerned Women for America	Member	2002 (est.) to 2013 (est.)
Career Fellowship at McLean Presbyterian Church	Member	2003 (est.) to 2007 (est.)
Libertarian Party of D.C.	Member	1999 (est.) to 2003 (est.)
Libertarian Party	Member	1992 (est.) to 2009 (est.)
Yale Law School Temporary Restraining Order Project	Member	1994
Yale Law School Federalist Society	Member	1994 (est.) to 1997
Yale Law Christian Fellowship	Member/Officer	1994 to 1997
Catholic Law Students' Association	Member	1994 to 1996 (est.)
Yale Law Students for Life	Member	1994 (est.) to 1997 (est.)
Yale Environmental Law Association	Member	1994 (est.) to 1996 (est.)
St. Mary's Catholic Church	Member	1994 to 1997
Morris Tyler Moot Court of Appeals Project at Yale Law School	Member	1995 (est.) to 1996 (est.)
InterVarsity Christian Fellowship	Member	1989 to 1993
Case Western Reserve University Cross Country and Track Teams	Member/Captain	1989-1993 (captain during part of this period)
Economics Honors Society at Case Western Reserve University	Member/Office	1991 (est.) to 1993
Phi Beta Kappa	Member	1993 (est.) to Present
National Parks Conservation Assoc	Member	2013 (est.) to 2014 (est.)

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Commissioner, U.S. Securities and Exchange Commission (January 2018 to present)

Director of Financial Markets Working Group (2014+2017) and Senior Research Fellow, Mercatus Center at George Mason University, Arlington, VA (January 2012-December 2017)

Adjunct Professor, George Mason University Law School, Arlington, VA (Spring 2014 & Spring 2015)

Member, Investor Advisory Committee, Securities and Exchange Commission (August 2014 to 2017)

Senior Counsel, Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC (August 2008-December 2011)

Counsel to Commissioner Paul Atkins, Securities and Exchange Commission, Washington, DC (June 2004-August 2008)

Staff Attorney, Division of Investment Management, Securities and Exchange Commission, Washington, DC (April 2000-June 2004)

Associate, Wilmer, Cutler & Pickering (now WilmerHale), Washington, DC (Fall 1998-March 2000)

Clerk to Judge Roger Andewelt, Court of Federal Claims, Washington DC (Fall 1997-Fall 1998)

Summer Associate, Jones Day, Cleveland, OH (Summer 1997)

Summer Associate, Choate Hall & Stewart, Boston, MA (Summer 1996)

Summer Associate, Squire Sanders, Cleveland, OH (Summers 1995-96)

Fulbright Scholarship Recipient, Vienna Austria (Fall 1993-Summer 1994)

Research Assistant, Center for Regional Economic Issues at Case Western Reserve University, Cleveland, OH (Summer 1993)

Government

experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Commissioner, Securities and Exchange Commission (2018 to present)

Member, Investor Advisory Committee to the Securities and Exchange Commission (2014 to 2017)

Senior Counsel, Senate Committee on Banking, Housing, and Urban Affairs, Washington, DC (August 2008-December 2011)

Counsel to Commissioner Paul Atkins, Securities and Exchange Commission, Washington, DC (June 2004-August 2008)

Staff Attorney, Division of Investment Management, Securities and Exchange Commission, Washington, DC (April 2000-June 2004)

Clerk to Judge Roger Andewelt, Court of Federal Claims, Washington DC (Fall 1997-Fall 1998)

Published**Writings:**

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Speeches

For the text of the speeches I have given as a Commissioner, please see:

https://www.sec.gov/news/speeches?aId=edit-field-person-target-id&field_person_target_id=Commissioner+Hester+M.+Peirce&year=All&speaker=122056.

Public Statements

For public statements I have given as a Commissioner, please see:

https://www.sec.gov/news/statements?aId=edit-field-person-target-id&field_person_target_id=Commissioner+Hester+M.+Peirce&year=All&speaker=122056.

Books

Hester Peirce and Benjamin Klutsey, eds., Reframing Financial Regulation: Enhancing Stability and Protecting Consumers (Mercatus Center at George Mason University 2016).

Hester Peirce and James Broughel, eds., Dodd-Frank: What It Does and Why It's Flawed (Mercatus Center at George Mason University 2012).

Book Chapters

Mark Calabria, Norbert Michel, and Hester Peirce, *Reforming the Financial Regulators*, in Prosperity Unleashed (Norbert Michel, ed. Heritage Foundation 2017)

Hester Peirce and Vera Soliman, *Rethinking the Swaps Clearing Mandate*, in Reframing Financial Regulation: Enhancing Stability and Protecting Consumers (Hester Peirce and Benjamin Klutsey, eds., Mercatus Center at George Mason University 2016).

Hester Peirce, *Gaining and Shedding Dodd-Frank's Systemically Important Financial Institution (SIFI) Label*, in Legal Risk Management, Governance and Compliance (Stuart Weinstein and Charles Wild, eds., Globe Law and Business 2016), version available at

https://www.mercatus.org/system/files/fsoc_designations_with_addendum_mercatus_version.pdf.

Hester Peirce, *Title V and the Creeping Federalization of Insurance Regulation*, in The Case Against Dodd-Frank: How the "Consumer Protection" Law Endangers Americans (Norbert Michel, ed., Heritage Foundation 2016).

Hester Peirce, *The Financial Industry Regulator Authority: Not Self-Regulation After All* in Building Responsible Financial Regulators in the Aftermath of the Global Financial Crisis (Pablo Iglesias-Rosriguez, ed., Intersentia 2015), version available at <http://mercatus.org/publication/financial-industry-regulatory-authority-finra-not-self-regulation-after-all>.

Articles/Working Papers/Policy Briefs

Hester Peirce, *Pondering Financial Reporting: Remarks Before the 2018 Leet Business Law Symposium*, 69 CASE W. RES. L. REV. 849 (2019), available at: <https://scholarlycommons.law.case.edu/caselrev/vol69/iss4/4>.

- Hester Peirce, *Motherhood and Humble Pie: Some Lessons for the SEC*, CATO JOURNAL (Feb. 26, 2019), available at <https://www.cato.org/cato-journal/winter-2019/motherhood-humble-pie-some-lessons-sec>.
- Hester Peirce, *Meeting Market Structure Challenges Where They Are*, 43 J. Corp L. 335 (2018).
- Hester Peirce, *Rethinking the National Market System*, 43 J. CORP. L. 649 (2018).
- Hester Peirce, *Dwindling Numbers in the Financial Industry*, Brookings Series on Financial Markets Regulation (May 15, 2017), <https://www.brookings.edu/research/dwindling-numbers-in-the-financial-industry/>.
- Hester Peirce, *Revisiting Dodd-Frank*, Mercatus Policy Primer (Feb. 8, 2017), <https://www.mercatus.org/publications/revisiting-dodd-frank>.
- Hester Peirce, *Derivatives Clearinghouses: Clearing the Way to Failure*, 64 CLEVE. ST. L. REV. 589 (2016).
- Hester Peirce, *Regulating through the Back Door at the Commodity Futures Trading Commission*, 2 HARV. J.L. & PUB. POL'Y FEDERALIST ED. 321 (2015).
- Hester Peirce, *Insurance Regulation in the Dodd-Frank Era* (Networks Financial Institute Summit Paper Mar. 17, 2015), <http://www.indstate.edu/business/NFI/events/11AIPPS/docs/Insurance-Regulation-Peirce.pdf>.
- Hester Peirce and Stephen Matteo Miller, *Small Banks By the Numbers: 2000-2014* (Mar. 17, 2015), <http://mercatus.org/publication/small-banks-numbers-2000-2014>.
- Hester Peirce, Ian Robinson, and Thomas Stratmann, *How Are Small Banks Faring Under Dodd-Frank?* CATO INSTITUTE RESEARCH BRIEFS IN ECONOMIC POLICY No. 20 (Feb. 18, 2015), <http://www.cato.org/publications/research-briefs-economic-policy/how-are-small-banks-faring-under-dodd-frank>.
- Hester Peirce, *Regulating through the Back Door at the Commodity Futures Trading Commission* (Mercatus Center at George Mason University Working Paper November 2014), <http://mercatus.org/sites/default/files/Peirce-Back-Door-CFTC.pdf>.
- Hester Peirce, *The Financial Industry Regulatory Authority: Not Self-Regulation after All* (Mercatus Center at George Mason University Working Paper January 2015), a version appeared in P. Iglesias-Rodríguez, ed., *Building Responsive and Responsible Financial Regulators in the Aftermath of the Financial Crisis* (Cambridge: Intersentia, 2015).
- James K. Glassman and Hester Peirce, *How Proxy Advisors Became So Powerful* (Mercatus Center at George Mason University Working Paper November 2014), <http://mercatus.org/publication/how-proxy-advisory-services-became-so-powerful>.
- Jerry Ellig and Hester Peirce, *SEC Regulatory Analysis: A Long Way to Go and a Short Time to Get There*, 8 BROOK. J. CORP., FIN. & COM. L. 361(2014).
- Hester Peirce, *Securities Lending and the Untold Story in the Collapse of AIG* (Mercatus Center at George Mason University Working Paper 2014), <http://mercatus.org/publication/securities-lending-and-untold-story-collapse-aig>.

Abby McCloskey and Hester Peirce, Holding Financial Regulators Accountable: A Case for Economic Analysis (American Enterprise Institute Working Paper 2014), <http://www.aei.org/publication/holding-financial-regulators-accountable-a-case-for-economic-analysis/>.

Hester Peirce, Ian Robinson, and Thomas Stratmann, *How Are Small Banks Faring Under Dodd-Frank?* (Mercatus Center at George Mason University Working Paper 2014), <http://mercatus.org/publication/how-are-small-banks-faring-under-dodd-frank>.

Hester Peirce and Robert Greene, *Opening the Gate to Money Market Fund Reform*, 34 PACE L. REV. 1093 (2014).

Hester Peirce, *Troubleshooting: Finance and Innovation*, THE AMERICAN INTEREST (Aug. 22, 2014).

Hester Peirce, *Economic Analysis by Federal Financial Regulators*, 9 J. L. ECON. & POL'Y 569 (2013).

Hester Peirce and Robert Greene, *Rethinking the Volcker Rule*, Mercatus on Policy (Jan. 15, 2013), <http://mercatus.org/publication/rethinking-volcker-rule>.

Hester Peirce and Robert Greene, *The Federal Reserve's Expanding Regulatory Umbrella*, Mercatus on Policy (Apr. 3, 2013), <http://mercatus.org/publication/federal-reserves-expanding-regulatory-umbrella>.

Testimony and Comments

Jay Clayton, Robert Jackson Jr., Hester Peirce, Elad Roisman, and Allison Herren Lee, Testimony of the U.S. Securities and Exchange Commission on "Oversight of the Securities and Exchange Commission: Wall Street's Cop on the Beat" Before the U.S. House of Representatives Committee on Financial Services (September 24, 2019), <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-wstate-peirceh-20190924.pdf>.

Hester Peirce, Statement before the Senate Committee on Banking, Housing, and Urban Affairs (Oct. 24, 2017), <https://www.banking.senate.gov/imo/media/doc/Peirce%20Testimony%202010-24-17.pdf>.

Hester Peirce, *Reforming the Financial System So It Works for the Rest of the System*, Testimony before the House of Representatives Committee on Financial Services (Apr. 26, 2017), <https://www.mercatus.org/publications/reforming-financial-system-so-it-works-rest-system>.

Mark J. Warshawsky and Hester Peirce, Response to Presidential Memorandum on Fiduciary Duty (Apr. 18, 2017), <https://www.mercatus.org/publications/response-presidential-memorandum-fiduciary-duty-rule>.

Brian Knight, J.W. Verret, and Hester Peirce, Response to OCC White Paper Exploring Special Purpose National Bank Charters for Fintech Companies (Jan. 17, 2017), <https://www.mercatus.org/publications/occ-national-bank-charters-fintech>.

Hester Peirce, Statement before the Senate Committee on Banking, Housing, and Urban Affairs (March 15, 2016), <https://www.banking.senate.gov/imo/media/doc/Peirce%20Statement%202013-15-16.pdf>.

Hester Peirce, *Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence*, Testimony before the House of Representatives Committee on Financial Services (June 11, 2015),

<http://mercatus.org/publication/examining-legislative-proposals-preserve-consumer-choice-and-financial-independence>.

Hester Peirce, The Dodd-Frank Act and Regulatory Overreach, Testimony before the Subcommittee on Oversight and Investigations of the House Financial Services Committee (May 13, 2015), <http://mercatus.org/publication/dodd-frank-act-and-regulatory-overreach>.

Hester Peirce and Kristine Johnson, Rule Proposal to Implement the Comprehensive Automated Risk Data System (Feb. 4, 2015), https://www.finra.org/sites/default/files/notice_comment_file_ref/14-37_mercatus_comments.pdf.

Hester Peirce and Vera Soliman, Disclosure of Consumer Complaint Narrative Data, Public Interest Comment (Sept. 10, 2014), <http://mercatus.org/publication/disclosure-consumer-complaint-narrative-data>.

Hester Peirce, Legislation to Reform the Federal Reserve on Its 100-Year Anniversary, Testimony before the House Committee on Financial Services (July 10, 2014), <http://mercatus.org/publication/legislation-reform-federal-reserve-its-100-year-anniversary>.

Hester Peirce, Increasing the Effectiveness of the Bureau of Consumer Financial Protection in Protecting Consumers, Testimony Before the Financial Institutions and Consumer Credit Subcommittee of the House Committee on Financial Services (May 21, 2014), <http://mercatus.org/publication/increasing-effectiveness-bureau-consumer-financial-protection-protecting-consumers>.

Hester Peirce, Rethinking the Federal Reserve's Many Mandates on Its 100-Year Anniversary, Testimony before the House Committee on Financial Services (Dec. 12, 2013), <http://mercatus.org/publication/rethinking-federal-reserves-many-mandates-its-100-year-anniversary>.

Hester Peirce, Regulatory Landscape: Burden on Small Financial Institutions, Testimony before the House Committee on Small Business (Dec. 3, 2013), <http://mercatus.org/publication/regulatory-landscape-burdens-small-financial-institutions>.

Hester Peirce and Robert Greene, Office of Financial Research Study Titled "Asset Management and Financial Stability," Public Interest Comment (Nov. 1, 2013), <http://mercatus.org/publication/office-financial-research-study-titled-asset-management-and-financial-stability>.

Hester Peirce and Robert Greene, Money Market Fund Reform: Amendments to Form PF (Sept. 17, 2013), <http://mercatus.org/publication/money-market-fund-reform-amendments-form-pf>.

Hester Peirce, Regulatory Impacts: The Impact of Dodd-Frank on Community Banking, Testimony before the House Committee on Oversight and Government Reform (July 18, 2013), <http://mercatus.org/publication/regulatory-burdens-impact-dodd-frank-community-banking>.

Hester Peirce, Financial Market Utilities, Public Interest Comment (May 3, 2013), <http://mercatus.org/publication/financial-market-utilities>.

Op-Eds and Blogs

A full list is appended at Schedule F.

Political Affiliations

and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Not applicable.

Political Contributions: Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

Not Applicable

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Please see Schedule E.

Future employment

relationships: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I am currently a Commissioner on the Securities and Exchange Commission and would continue in that capacity if I were confirmed by the Senate for a new term.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no such plans.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

Potential conflicts

of interest: 1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

Not applicable.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

I have consulted with the Office of Government Ethics and the U.S. Securities and Exchange Commission's (SEC) Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with the SEC's Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

I have consulted with the Office of Government Ethics and the U.S. Securities and Exchange Commission's (SEC) Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with the SEC's Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

**Civil, criminal and
investigatory
actions:**

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

SCHEDULE E: STATEMENT OF QUALIFICATIONS

I have had the privilege of serving as a Commissioner of the Securities and Exchange Commission (SEC) since January 2018. I have participated in numerous rulemakings, many enforcement actions, and countless meetings with SEC staff experts. I have focused, among other things, on security-based swap reforms mandated by Dodd-Frank, coordination with the CFTC, and improving the regulatory environment for innovation and capital formation. In recent months, as society, the economy, and our markets have suffered the effects of COVID-19 and the associated social distancing measures, I have participated in the Commission's market-monitoring and temporary relief efforts. Among other things, we made temporary regulatory adjustments so that crowdfunding is a viable complement to the Paycheck Protection Program for small businesses trying to survive this difficult period. These experiences have contributed to a deeper understanding of the Commission and the markets and how both can best serve the American public. Throughout my term as Commissioner, I have drawn on my prior education and work experience, which have complemented the backgrounds of my colleagues.

My undergraduate study of economics provided me a lasting framework for thinking about how markets work, how people respond to incentives, and how a well-functioning economy contributes to people's well-being. My legal training gave me a basis in constitutional, securities, and administrative law and highlighted the role that high-quality regulation plays in enabling markets to serve society effectively.

I have spent most of my professional career working on issues related to financial regulation. After law school and a clerkship on the Court of Federal Claims, I joined a large law firm as an associate in the securities department. In that job, I worked on a range of issues from investment company regulation to securities enforcement and litigation. Many of my colleagues were alumni of the Securities and Exchange Commission. Their happy memories of the Commission piqued my interest, and I applied for an opening in the Division of Investment Management.

As a Commission staff attorney, I wrote rules for investment companies. In addition to gaining a deeper understanding of mutual fund regulation, I acquired valuable experience about how the Division and the Commission operate. I learned a tremendous amount about the law and the industry from the seasoned securities attorneys with whom I worked.

After four years in the Division of Investment Management, I was detailed to the office of Commissioner Paul Atkins. This position provided me broader exposure to the Commission's work and to additional areas of securities law. In my four years in the Commissioner's office, I worked primarily on investment management and enforcement issues, but also got exposure to areas such as corporation finance, accounting, and market regulation. I had a wealth of opportunities to learn from staff across the Commission and from many outside parties—including investors, issuers, regulated entities, and other regulators—with an interest in the issues before the Commission.

Following my time at the Commission, I had the opportunity to work on then Ranking Member Richard Shelby's staff on the Senate Committee on Banking, Housing, and Urban Affairs. Having joined the Committee staff in August 2008, I was quickly immersed in the unfolding financial crisis. The Committee staff sought to understand the regulatory and market factors that contributed to the crisis and to craft a legislative response to the crisis. This undertaking exposed me to many experts with a wide variety of viewpoints and experiences in the financial industry. In addition, frequent interaction with principals and staff from different financial regulatory agencies gave me new insights into the challenges regulators face as they try to craft and implement effective regulations.

After leaving the Committee, I was able to continue my work on financial regulation at the Mercatus Center at George Mason University. In addition to editing and contributing to a book about the Dodd-Frank Act and another about financial regulatory reform, I wrote about issues such as money market mutual funds, administrative process, the use of economic analysis at federal financial regulators, and derivatives clearing. I also reviewed and provided input on the work of other scholars writing about a wide array of financial regulatory issues. Finally, serving on the SEC's Investor Advisory Committee with an experienced and diverse group of colleagues helped to shape my views on the importance of investor protection in the SEC's mission.

Having been in the job of SEC Commissioner for more two years, I know how demanding it is, but also realize the many remaining opportunities that another term would afford me to help the Commission accomplish important regulatory objectives. These objectives include working on strengthening our compliance, investor education, and enforcement programs and furthering regulatory reforms related to capital formation, technological innovation, market structure, disclosure simplification, security-based swaps, finders, and transfer agents. I also would work to enlist the capital markets in the country's efforts to recover from COVID-19. Finally, I continue to be committed to working to ensure that the powerful, life-transforming benefits of our capital markets reach every community in our country. I believe that my experience thus far would contribute greatly to enabling me to serve in the role effectively should I have the honor of being confirmed for another term.

SCHEDULE F: ADDITIONAL PUBLICATIONS

Hester Peirce and Elad Roisman, In Coronavirus Crisis, Crowdfunding Small Business Rules Relaxed: SEC Commissioners Peirce, Roisman, Fox Business (May 20, 2020), <https://www.foxbusiness.com/markets/coronavirus-crisis-crowdfunding-small-business-sec-commissioners-peirce-roisman>.

Hester Peirce, This Cat is a Dangerous Dog, Real Clear Policy (October 9, 2019), https://www.realclearpolicy.com/articles/2019/10/09/this_cat_is_a_dangerous_dog_111285.html.

Hester Peirce and Vera Soliman, The CFPB's Animated Approach to Financial Regulation, FinRegRag (July 12, 2017), https://finregrag.com/the-cfpbs-animated-approach-to-financial-regulation-e526a5b71e5d?source=collection_home---6-----2-----.

Hester Peirce, Finance Is in the Midst of a Regulatory Reform Quilting Bee, Real Clear Markets (June 29, 2017), http://www.realclearmarkets.com/articles/2017/06/29/finance_is_in_the_midst_of_a_regulatory_reform_quilting_bee_102765.html.

Hester Peirce, Dodd-Frank Do-Over, FinRegRag (June 8, 2017), https://finregrag.com/dodd-frank-do-over-9a3870d769bc?source=collection_home---6-----7-----.

Hester Peirce, Choice: OLA versus BOLA, FinRegRag (June 6, 2017), https://finregrag.com/dodd-frank-do-over-9a3870d769bc?source=collection_home---6-----7-----.

Hester Peirce, The OLA: Concept and Reality, FinRegRag (May 26, 2017), https://finregrag.com/the-ola-concept-and-reality-395880d42b99?source=collection_home---6-----11-----.

Hester Peirce, Seven Core Principles in Delayed Action, FinRegRag (May 23, 2017), https://finregrag.com/seven-core-principles-in-delayed-action-9379e4525173?source=collection_home---6-----13-----.

Hester Peirce, Eliminating Dodd-Frank's Overrated Escape Hatch, Real Clear Markets (May 25, 2017), http://www.realclearmarkets.com/articles/2017/05/25/eliminating_dodd-franks_overrated_escape_hatch_102707.html.

Hester Peirce, Rethinking Regulatory Framework, U.S. News & World Report (May 22, 2017), <https://www.usnews.com/opinion/economic-intelligence/articles/2017-05-22/seven-core-principles-to-reform-the-financial-regulatory-system>.

Hester Peirce, Where Have All the BDs and FCMs Gone?, FinRegRag (May 17, 2017), https://finregrag.com/where-have-all-the-bds-and-fcms-gone-8e81b1a6d1e2?source=collection_home---6-----15-----.

Hester Peirce, Following the Fiduciary Rule, FinRegRag (May 15, 2017), https://finregrag.com/where-have-all-the-bds-and-fcms-gone-8e81b1a6d1e2?source=collection_home---6-----15-----.

Hester Peirce, Five Questions about the DOL Fiduciary Rule, On the Regs (May 15, 2017), <https://ontheregs.com/2017/05/15/five-questions-about-the-dol-fiduciary-rule/>.

Hester Peirce, Big Bailout Court Bout, FinRegRag (May 10, 2017), https://finregrag.com/big-bailout-court-bout-b38355ac74ff?source=collection_home---6-----18-----.

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Hester Peirce, TARP Success Trap (Apr. 18, 2012), http://mercatus.org/expert_commentary/tarp-success-trap.

Hester Peirce, The CFTC and Political Reality (Apr. 4, 2012), http://mercatus.org/expert_commentary/cftc-and-political-reality.

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Hester Peirce, Goldman Customer Service versus MF Global Customer Service (Mar. 27, 2012), http://mercatus.org/expert_commentary/goldman-customer-service-versus-mf-global-customer-service.

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Hester Peirce, TARP Hangers-On (Mar. 9, 2012), http://mercatus.org/expert_commentary/tarp-hangers.

Hester Peirce, National Consumer Protection Week (Mar. 8, 2012), http://mercatus.org/expert_commentary/national-consumer-protection-week.

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Hester Peirce, Celebrating the Oscars, The Hill (Feb. 27, 2012), <http://thehill.com/blogs/congress-blog/politics/212789-hester-peirce-senior-research-fellow-mercatus-center>.

Hester Peirce, Hijacking SEC Disclosure (Feb. 22, 2012), http://mercatus.org/expert_commentary/hijacking-sec-disclosure.

Hester Peirce, The Unacceptably Reserved Federal Reserve (Feb. 21, 2012),
http://mercatus.org/expert_commentary/unacceptably-reserved-federal-reserve.

Hester Peirce, Budget Increases Should Require Accountability (Feb. 14, 2012),
http://mercatus.org/expert_commentary/budget-increases-should-require-accountability.

Hester Peirce, TARP Takes Another Misstep (Feb. 14, 2012), http://mercatus.org/expert_commentary/tarp-takes-another-misstep.

Hester Peirce, Declaring Financial System Safe Requires Serious Assumptions (Feb. 13 2012),
http://mercatus.org/expert_commentary/declaring-financial-system-safe-requires-serious-assumptions.

Hester Peirce, The Flip Side of the Insider Trading Ban (Feb. 1, 2012),
http://mercatus.org/expert_commentary/flip-side-insider-trading-ban.

Hester Peirce, Setting Ourselves Up for Another Crisis (Jan. 31, 2012),
http://mercatus.org/expert_commentary/setting-ourselves-another-crisis-0.

Hester Peirce, GM's Success and the Taxpayers' Tab (Jan. 26, 2012),
http://mercatus.org/expert_commentary/gm-s-success-and-taxpayers-tab.

Hester Peirce, Halted SEC Rule Good News for Investors (Jan. 25, 2012),
http://mercatus.org/expert_commentary/halted-sec-rule-good-news-investors.

PREPARED STATEMENT OF CAROLINE CRENSHAW
 TO BE A MEMBER OF THE SECURITIES AND EXCHANGE COMMISSION
 JULY 21, 2020

Chairman Crapo, Ranking Member Brown, and distinguished Senators of the Committee: Thank you for the opportunity to appear here today. It is an honor to testify before you regarding my nomination to be a Commissioner of the Securities and Exchange Commission, where I have worked for the past 7 years, and in whose mission I deeply believe.

To begin, I want to thank all those who have encouraged and supported me through this process: family, friends, colleagues, members of Congress and their talented staff, and many others whom I did not know prior to my nomination. It has been an educational and memorable journey.

America's capital markets have powered the largest, most vibrant economy in the world. But our economy is facing unprecedented challenges and, now more than ever, I believe we must do all we can to keep our markets transparent, competitive, and safe. All Americans must have the confidence to invest their hard-earned savings in their futures.

That is the critical mission of the SEC, and it is the reason why I chose to transition my career from private practice to public service. I began my time at the SEC as a career staff attorney in the Office of Compliance Inspections and Examinations, helping oversee the institutions that manage millions of Americans' savings. More recently, I served as Counsel to two dedicated public servants, Commissioners Kara Stein and Robert Jackson, focusing on strengthening investor protections in our increasingly complex markets. It has been my great privilege to support the SEC's mission for the better part of a decade and see up close how our securities laws are built—case-by-case and rule-by-rule.

But it's not just that experience that brings me before you today. I also carry with me the stories of soldiers, family, and friends who give the SEC's mission real meaning. As a Captain in the United States Army Reserve, Judge Advocate General's Corps, that mission means making sure my fellow Soldiers have a fighting chance to secure the financial futures they deserve.

As a sister of an entrepreneur, it means making sure our markets unite job-creating capital with individuals like my brother, who recently started a small business developing 3D printing technology for military uses. And, as a new mother, it means promoting the level playing field that will allow my family, and millions of other American families, to fund the rising costs of education by safely and confidently investing in our markets.

If confirmed, I intend to bring all of these experiences—from sister to staffer to Soldier—to bear on the SEC's mission.

That's why, if I have the honor of joining the Commission, you can count on me to be a tireless advocate for the ordinary American families who are the backbone of our economy. One of the biggest challenges for those families—and for the Commission—is the retirement crisis facing the country. The Nation's shift from defined benefit pension plans—which my parents, and their parents, relied upon for their futures—to defined contribution plans, moved the responsibility of lifelong saving from employers to individuals. That has left too many hard-working Americans without sufficient resources for retirement.

With investment decisions now largely in the hands of individual Americans, the Commission should do all it can to ensure everyone gets a fair deal. The Commission should provide tools that allow individuals to distinguish between financial advisers and fraudsters and to fund their retirements in safe and sustainable ways. These tools include clear, plain-English information and access to high-quality investment advice. Moreover, if confirmed, I would draw on my experience to make sure the Commission keeps a close watch over the large institutions increasingly entrusted with the growth and safekeeping of Americans' savings.

As a Washington, D.C., native who grew up just blocks away on Capitol Hill, I have had the great benefit of being surrounded by dedicated public servants of all political stripes for my entire life. If I have the honor of being confirmed, I will bring with me that commitment to public service and appreciation for diverse views as the Commission considers how best to help Americans grapple with the economic challenges before us.

Thank you for your time. I would be delighted to answer any questions you might have.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Crenshaw Caroline Abbey
(Last) (First) (Other)

Position to which nominated: Member, United States Securities and Exchange Commission

Date of nomination:

Date of birth: 03 19 1982 Place of birth: Washington, D.C.
(Day) (Month) (Year)

Marital Status: Married Full name of spouse: Alexander Wysham Cole

Name and ages of children: Edward Albert Cole (1 year)

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	Harvard College	2000-2004	A.B.	June 10, 2004
	University of Minnesota	2006-2009	J.D.	May 16, 2009

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

- Harvard College: Graduated *cum laude*; lettered in varsity lacrosse
- University of Minnesota Law School: Graduated *magna cum laude*; Editor-in-Chief and Articles Editor, Minnesota Journal of Law, Science & Technology (2008-2009); Stone Scholarship recipient (2007-2009); Dean's List (2008-2009)
- Sutherland, Asbill & Brennan Pro Bono Award (2012)
- D.C. Pro Bono Honor Roll (2012)
- Securities and Exchange Commission "Special Act" awards
- U.S. Army Reserve: Army Achievement Medal; National Defense Service Medal; Army Reserve Components Overseas Training Ribbon; Army Service Ribbon; Commandant's List (top 20%) of my Officer Basic Course at The Judge Advocate General's Legal Center and School.

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly civic, charitable and other organizations.

Organization	Office held (if any)	Dates
St. Mark's Episcopal Church	None	Since childhood
University of Minnesota Lockhart Club	None	Approx. 2010 - present
Harvard 1636 Society	None	Approx. 2005-2018
Army Navy Club of Washington, D.C.	None	Approx. 2017 - present
Harvard Club of New York City	None	Approx. 2004 - present
Harvard Club of Washington D.C.	None	Approx. 2008-2010
Washington D.C. Bar Association	None	2010-present
Virginia Bar Association	None	2010-present
American Bar Association	None	2019-present
SEC's Volunteer Club	Co-Chairwoman	2015-present

Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Post-Law School Employment

U.S. Securities and Exchange Commission (SEC) | Washington, D.C. (Aug. 2013 – Present)

- Senior Special Counsel within the Office of Compliance Inspections and Examinations (OCIE) (Feb. 2020 – Present)
- Counsel to Commissioner Robert J. Jackson, Jr. (Jan. 2018 – Feb. 2020)
- Senior Special Counsel to the National Associate Director of the FINRA and Securities Industry Oversight examination program within OCIE (Jan. 2016 – Jan. 2018)
- Counsel to Commissioner Kara M. Stein (Jan. 2015 – Jan. 2016)
- Attorney Advisor, Office of Chief Counsel, OCIE (Aug. 2013 – Jan. 2015)

Captain, U.S. Army Reserve | Alexandria, Virginia | Judge Advocate General's Corps (Feb. 2016 – Present)

Sutherland, Asbill & Brennan, LLP (now Eversheds Sutherland) | Washington, D.C. | Associate (Apr. 2010 – Mar. 2011; Sept. 2011 – Aug. 2013)

U.S. District Court for the Southern District of West Virginia | Charleston, West Virginia | Law Clerk to Chief Judge Joseph R. Goodwin (Mar. 2011 – Sept. 2011)

District of Columbia Office of the Attorney General, Juvenile Justice Section | Washington, D.C. | Pro Bono Attorney (Feb. 2010 – Apr. 2010)

Brady Center Against Gun Violence, Legal Action Group | Washington, D.C. | Volunteer (Oct. 2009 – Jan. 2010); Paid Summer Intern (Summer 2007)

Law School Employment

University of Minnesota Law School | Minneapolis, Minnesota | Research Assistant to Centennial Professor of Law Barry C. Feld (Fall 2007 – Spring 2009)

University of Minnesota Law School Legal Writing Program | Minneapolis, Minnesota | First-Year Legal Writing Instructor (Fall 2007 – Spring 2009)

Minnesota Justice Foundation, 10th District Public Defender's Office | Stillwater, Minnesota | Volunteer, (Fall 2006 – Spring 2007)

Secondary School Teaching/Coaching

Bishop O'Connell High School | Arlington, Virginia | Teacher and Coach (Fall 2004 – Spring 2006)

Government

experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

- Employment at SEC; United States Army Reserve; United States District Court for the Southern District of West Virginia; Washington D.C. Office of the Attorney General (listed above)
- Chairwoman of the Parks and Events Committee for the Advisory Neighborhood Commission (ANC) 6C | Washington, D.C. (Approx. June 2014 – Jan 2015)

Published

Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Brian Rubin & Caroline Crenshaw, *The Social Network Unhinged: #TopSocialMediaEnforcementIssuesintheSecuritiesIndustry*, Banking & Financial Services Policy Report (June 2013).

Greg Kaufman & Caroline Crenshaw, *Finding Guidance on Electronic Discovery from the Court*, PARTNERING PERSPECTIVES, Fall 2010, at 3.

Caroline Crenshaw, *Patents and Patients: Who is the Tragedy of the Anticommons Impacting and Who is Bearing the Cost of High-Priced Biotechnological Research?* 9 MINN. J. OF L. SCI. & TECH. 913 (2008).

Political**Affiliations**

and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

- Member of the Democratic Party

- Member of Capitol Women's Investment Network, a group of professional women in the Washington, D.C. area which works to recruit and elect Democratic women to public office throughout the United States (Approx. 2017 – Present)
- Volunteered on a Democratic National Committee phone bank for Martha Coakley (2010)

Political

Contributions: Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

- Heidi for Senate 02/02/2017 \$500.00
- Heidi for Senate 02/02/2017 \$500.00
- Hillary for America 09/30/2016 \$500.00
- Hillary for America 07/04/2016 \$500.00
- To the best of my knowledge and research, I have not made any other political contribution of \$500.00 or more to any individual, campaign, organization, political party, political action committee or similar entity during the last eight years.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Future employment

relationships: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

N/A. I currently work at the SEC, where, if confirmed, I would be serving as Commissioner.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no plans to return to any prior civilian employer after completing government service.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

**Potential conflicts
of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

I have a 401(k) plan with Sutherland, Asbill and Brennan, a law firm where I was employed as an associate from approximately 2010-2013. I continue to hold a diversified mutual fund through the 401(k) plan, but the plan sponsor has not made a contribution since I left the law firm in 2013.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the U.S. Securities and Exchange Commission's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with the SEC's Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the U.S. Securities and Exchange Commission's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with the SEC's Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the U.S. Securities and Exchange Commission's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the Ethics Agreement that I have entered into with the SEC's Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

**Civil, criminal and
investigatory
actions:**

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

None.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

In 2015 the Inspector General (Carl Hoecker) of the United States Securities and Exchange Commission undertook an investigation into a leak of non-public information regarding an Enforcement matter pending before the Commission at that time. As part of that investigation, the IG's office asked to interview all of Commissioner Kara M. Stein's counsels and advisors. I believe the IG's office interviewed the counsels for each of the three other Commissioners (Luis Aguilar, Daniel Gallagher, and Michael Piwowar) as well. I interviewed with the IG's office and never heard any follow-up after the interview. I do not know how the investigation was resolved. There was never any allegation of wrong-doing on my part, I do not believe I was ever the subject of the investigation, and I was not subject to any disciplinary action of any kind after the investigation.

ATTACHMENT 1
Statement of Qualifications
To Serve As Commissioner of the SEC

My professional experiences as a lawyer at the Securities and Exchange Commission (SEC) and in private practice, as a Captain in the U.S. Army Judge Advocate General's Corps, and as a law clerk for a federal district judge, have provided me with the background and skills to address the critical issues facing the SEC and an appreciation for how the work of the SEC impacts individual Americans and their communities.

During the past seven years I have worked on issues at the heart of the SEC's mission – crafting and implementing regulations, policies, and enforcement actions that protect investors from fraud and ensure that the nation's capital markets are fair and accessible to those investors and businesses alike. This has included working on Division of Corporation Finance issues that arose after passage of Dodd-Frank, drafting rules under the Investment Company Act, and shaping various stock-market structure debates arising under the Securities Exchange Act. I have served as Counsel to two SEC Commissioners, first Commissioner Kara M. Stein and then Commissioner Robert J. Jackson, Jr. Whether in the majority or minority, I have been involved in many substantive policy decisions at the SEC and often helped achieve policy consensus.

I first joined the SEC in August, 2013 as an Attorney Advisor in the Office of the Chief Counsel within the Office of Compliance Inspections and Examinations (OCIE). I was later promoted to Senior Special Counsel to the National Associate Director of the Financial Industry Regulatory Authority (FINRA) Oversight Group. This experience navigating the SEC's interaction with FINRA, plus the strong relationships I developed among the SEC staff, proved invaluable during my years as commissioner counsel. As a Commissioner I would be well prepared to manage effectively the complexities of working with the several divisions and offices within the SEC and FINRA. Further, my diverse experiences at the SEC provide a balanced perspective and unique framework to analyze the broad array of issues before the Commission.

Throughout my career the impact of government policies on retail investors has been my main focus and is one of the reasons I joined the SEC, leaving private practice at Sutherland, Asbill and Brennan, LLP. At Sutherland I worked in the securities litigation practice group, advising and representing officers and directors of public companies, large financial institutions, insurance companies, broker-dealers, and investment advisers, all of which the SEC oversees. While working at Sutherland, I also took a leave of absence to serve as a law clerk for the Honorable Chief Judge Joseph R. Goodwin in the U.S. District Court for the Southern District of West Virginia. My clerkship provided important insight into how federal courts review the actions of federal agencies, including the SEC.

My focus on public issues also led me to join the U. S. Army Reserve. As a judge advocate I have handled matters ranging from representing the Army on larceny appeals to advising Soldiers on sexual assault allegations and landlord tenant disputes. In particular my military leadership training, plus exposure to my fellow Soldiers' investment issues, convinced me that everyone needs an advocate, whether a main street investor or a private or colonel in the military.

This sense of purpose underpins my approach to my job at the SEC and motivates me to ask for your support to be confirmed as a Commissioner of the SEC. If confirmed as a Commissioner, I would draw upon all these experiences to tackle the complex questions presented by our capital markets and to ensure that all Americans have a seat at the SEC table.

PREPARED STATEMENT OF KYLE HAUPTMAN

TO BE A MEMBER OF THE NATIONAL CREDIT UNION ADMINISTRATION BOARD

JULY 21, 2020

Thank you Chairman, Ranking Member Brown, and Members of the Committee. It's an honor to be here. I'd like to thank the President and his team, plus the NCUA staff that have been so helpful. I want to especially thank Senator Cotton for his support throughout this process.

I'd like to say hello to those watching online, especially my wife Kelly, who is pregnant with our first child, my brother Gabe and his husband Geoff, my siblings-in-law Katie and Marcus, and my parents-in-law Sue and Mike.

When offered this nomination, I accepted immediately. It's a chance to help over 120 million credit union members achieve their financial goals. And if you encounter someone who actually loves their financial institution, there's a good chance you're speaking to a credit union member.

These last few months have demonstrated the cooperative nature of credit unions, as they've waived fees and adjusted loans without before anyone in D.C. told them to do so. Many of us also recall the last Government shutdown when credit unions gained members by offering interest-free loans to furloughed workers. But this reputation depends on proper oversight from NCUA.

Before the Senate I worked on regulatory policy, including serving on a bipartisan SEC Advisory Committee. Prior to that I was in the financial sector, focused on the same money markets where credit unions obtain financing. Twelve years ago, I was a mid-level employee working in Asia for Lehman Brothers, and wound up losing my job, my savings and my work visa all due to management that didn't fully understand the risks they were taking. That experience showed me first-hand the risks associated with liquidity, interest-rates and balance-sheet management. This perspective should be both valuable and somewhat unique on the NCUA Board.

One of the best parts of serving in the Senate has been working with Arkansas credit unions and their companions in the Cornerstone Credit League in Texas and Oklahoma. I'm confident that if you speak to them, they'll tell you I've been knowledgeable and attentive regarding their concerns. And while I value those relationships, you can be sure I'll be an independent regulator who works only for credit union members and the taxpayers who back NCUA insurance.

In addition to my passion for financial policy, I have an interest in public service due to my upbringing. My father worked in the National Park Service for 32 years. Unfortunately, in the last 3 years both he and my mother passed away, but I think they'd be proud to see me here. I should mention that both were lifetime Democrats, my mother a Bernie Sanders supporter.

On a related note, my Senate colleagues will tell you I work in a bipartisan fashion. I've worked on legislation with the majority of Committee Democrats, including with Ranking Member Brown's staff on reforming anti-money-laundering laws. I've been impressed with the character and acumen of the Democratic staff, and in fact several have been to my home.

Credit unions help people achieve the same American dream that my dad experienced, born in Brooklyn to parents with 4th-grade educations. His dad, my grandfather, worked in the NYC subway putting up advertising. That man's grandson is now before the U.S. Senate, a testament to American opportunity, and at NCUA my overarching goal will be extending that kind of opportunity to as many people as possible.

I'll have three priorities at NCUA: Priority number one is the same as America's: managing the fallout from the current pandemic and economic downturn. Over 50 million people have filed for unemployment since March. While the 2008 crisis began in the financial sector and then hit Main Street, our current crisis may be the reverse. Credit unions were chartered to serve those of modest means, and I plan to work with them, the Board and Congress on solutions for those facing financial stress.

My second priority is technology. The pandemic created a test case on how many things, such as this hearing, can be done remotely or online. I'd like to expand technology's role in reaching the underserved. If we recall the litigation years ago about Blockbuster Video's late fees and market dominance, the ultimate solution was American startups like Netflix. While this analogy doesn't perfectly align with credit unions, I'm convinced innovation can provide more inclusive financial services.

And last: Aligning incentives. As we know from the last crisis, we get what we incentivize. One excellent policy that serves as a model here is the less-frequent exam cycle for credit unions that get the highest marks on their NCUA exams for safety and stability. This policy lets regulators focus on more problematic credit

unions, while the well-run credit unions strive to keep earning that benefit. This is policy where safety and soundness are well-aligned with serving members. Do this correctly, and we'll combat poor-quality high-priced products with better, lower-priced ones.

Thank you again for this opportunity, and I look forward to your questions.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: **Hauptman** **Kyle**
(Last) (First) (Other)

Position to which nominated: Board Member, National Credit Union Administration

Date of nomination: June 15, 2020

Date of birth: 13 December 1973 Place of birth: Washington, DC
(Day) (Month) (Year)

Marital Status: Unmarried

Full name of spouse: n/a

Name and ages of children:

None

Education:

Institution	Dates Attended	Degrees Received	Dates of Degrees
UCLA	1993-96	BA	June 1996
Columbia University	2002-2004	MBA	May 2003

**Honors
and awards:**

List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

I have not received any scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions.

Memberships:

List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Phi Kappa Psi @ UCLA		1994-96
SEC Advisory Committee	Voting Member	2016-17

Employment record:

List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Employer	Job Title	Location	Dates of Employment
U.S. Senate	Policy Advisor	Washington, DC	June 2017-present
Dept. of Treasury	Advisor	Washington, DC	Jan-May 2017
Peace Corps	Advisor	Washington, DC	June 2017 (2 weeks total)
Main Street Growth Project	Executive Director	Washington, DC	Sept 2015 - Jan 17
American Enterprise Institute	Senior Vice President	Washington, DC	March 2013 - August 2015
Romney for President 2012	Policy Advisor	Boston, MA	October 2011 - November 2012
Jefferies Japan	Senior Vice President	Tokyo, Japan	June 2009 - September 2011
Nomura Securities Australia	Vice President	Sydney, Australia	Oct 2008 - Jan 2009
Lehman Brothers	Vice President	NYC, Tokyo, Sydney	August 2004 – Sept 2008
Standard Chartered	Summer intern	NYC	June 2003-August 2003
BlueMatrix Inc.	Vice President	NYC	August 2000 – August 2000
Roxbury Capital	Trader	Santa Monica, CA	Dec 1999 – August 2000
Dimensional Fund Advisors	Trading Assistant	Santa Monica, CA	1997 - 1999
May Corporation	Training Associate	Los Angeles, CA	1996 - 1997

Government

experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Employer	Job Title	Location	Dates of Employment
US Senate	Policy Advisor	Washington, DC	June 2017-present
Dept. of Treasury	Advisor	Washington, DC	Jan-May 2017
Peace Corps	Advisor	Washington, DC	June 2017 (2 weeks total)
SEC Advisory Committee	Voting Member	Washington, DC	2016 – 2017
Trump Transition Team	Agency Landing Team	Washington, DC	2016-2017

Published

Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

Morning Consult | We excluded the “Have-nots” from the “Sale of the Century” (Nov. 23, 2016)

Washington Examiner | Candidates’ financial policy positions extra important in 2016 (Nov. 6, 2016)

With Newt Gingrich: The Hill | CFPB Needs Reining In (Oct. 28, 2016)

Wall Street Journal | Letter: Regulations Help ‘Haves,’ Hurt ‘Have-Nots’ (Oct. 20, 2016)

Project Invested | Why we’re so divided and how better financial policy can help (Oct. 18, 2016)

The Washington Times | CFPB structure deemed illegal (October 11, 2016)

Medium.com | Lehman’s Lesson: From A Former Employee (Sept. 16, 2016)

FoxNews.com | OPINION: Immigration? Terror? Here’s the real debate we should be having in 2016 (August 25, 2016)

The Hill | OPINION: “Main Street cannot grow without regional banks” (August 9, 2016)

Washington Examiner | “Dodd-Frank’s regulatory speed trap” (June 27, 2016)

The Hill | OPINION: “Big government vs. the little guy” (April 6, 2016)

Independent Journal Review | OPINION: Yes Bernie, The Economy’s Rigged, But Here’s The Proof That Big Government Is Doing The Rigging

American Enterprise Institute (AEI) | BLOG: Prediction Markets: Before and after the GOP debate (August 7, 2015)

American Enterprise Institute (AEI) | BLOG: The “Trump Bump”: Markets aren’t really buying it (July 23, 2015)

American Enterprise Institute (AEI) | BLOG: If nominated, who’d win the presidency? The view from prediction markets (March 23, 2015)

American Enterprise Institute (AEI) | BLOG: Place your bets: Why all political junkies should follow prediction markets (January 29, 2015)

American Enterprise Institute (AEI) | BLOG: Turnout was UP in key Senate races (November 6, 2014)

American Enterprise Institute (AEI) | BLOG: Presidents who avoid primaries have never lost, and 3 other things to keep in mind for 2016 & 2020 (September 25, 2014)

American Enterprise Institute (AEI) | BLOG: Dodd-Frank: Helping lawyers and foreign cities, hurting US competitiveness (July 28, 2014)

American Enterprise Institute (AEI) | BLOG: Today’s NY Times article on debt “default” is point-blank incorrect in headline and substance (October 9, 2013)

Political**Affiliations**

and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

National Republican Senatorial Committee

I served as a consultant in the 2014 election cycle. The job involved being part of a team that created briefing documents on various policy issues, to be distributed to perspective 2014 Senate candidates.

Romney for President 2012

I served as a policy advisor on financial & housing policies. This included debate prep and ideas for reforming Dodd-Frank and the GSEs.

Political**Contributions:**

Itemize all political contributions of 500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

I have not made political contributions above \$500.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Kyle Hauptman
Statement of Qualifications

The NCUA position requires working in a bipartisan fashion to promote the safety and soundness of U.S. credit unions. Having worked in finance during a financial crisis, drafted legislation that helps credit unions and their small business customers, and worked with Democrats and Republicans in the Senate and on the SEC Advisory Committee, I feel that my experience has prepared me well to serve as an NCUA Board Member.

For 23 years I've worked in finance and/or financial policy, including drafting Senate legislation related to lending, saving and other financial policy. My education includes an MBA with a concentration in Finance and a BA in Political Science. I was pleased to be a part of drafting S. 2155, the 2017 reform of the Dodd-Frank Act, which addressed several credit union issues including online account-opening, mortgage lending and business loans. In fact, that bill addressed many of the issues raised in my 2015-2016 public writings. I have had countless meetings and discussions over the last 3 years with the Cornerstone Credit Union League (which encompasses 550 credit unions in AR, TX & OK) and the Arkansas Credit Union Association. The leaders of those organizations can attest to my knowledge and attentiveness to their concerns.

I spent eleven years working in the financial services industry, four of which were in equities trading for money-managers and seven years were spent trading fixed-income instruments in New York, Tokyo and Sydney. The seven years in fixed-income experience is particularly relevant to the NCUA board in that my work dealt entirely with issues of liquidity and credit-and interest-rate risk. Five of those years focused on the overnight funding market for financial institutions, an area of acute concern during times of financial stress. As someone who worked at Lehman Brothers during its 2008 collapse, I saw first-hand the problems that arise when financial institutions have insufficient liquidity relative to the risk level of their assets. In addition, my MBA studies at Columbia University inform my judgement on economic stress and lender concerns about liquidity.

After being appointed by SEC Chair Mary Jo White to be a voting member of the SEC Advisory Committee on Small and Emerging Companies, I worked with the SEC Commissioners and the thirteen other Advisory Committees in a bipartisan fashion (the group had widely divergent political views) on the key issues surrounding small-business funding. These small businesses obtain funding partially through equity financing and in part from small business loans - a key aspect of credit union operations (and their safety and soundness).

In 2011 and 2012, I served as a Policy Advisor for Financial and Housing Policy. This entailed briefing both now-Senator Romney and Vice-Presidential nominee on Dodd-Frank reform, housing policy, the 2008-09 automobile industry bailout and monetary policy.

In addition, from 2015-17, I was Executive Director of the Main Street Growth Project, a 501(c)(4) organization promoting a more consumer and small-business friendly approach to financial policy. I gave speeches, wrote articles and was concurrently a member of the SEC Advisory Committee on Small and Emerging Companies. S. 2155, the overhaul of the Dodd-Frank Act that was to become law in 2018, included many ideas that aligned with my work at Main Street Growth Project.

For over three years I have been Staff Director of the Senate Banking Committee's Subcommittee on Economic Policy, as well as Economic Policy advisor to Senator Tom Cotton, chairman of the subcommittee. I prepared Sen. Cotton for multiple hearings centered on oversight of the NCUA, as well as the confirmation hearings of Chairman Rodney Hood and Board Member Todd Harper. I was involved in the drafting and negotiations for S. 2155, the 2018 reform of the Dodd-Frank Act, which addressed several credit union issues including mobile account-opening, mortgage lending and business loans. The current pandemic has shed light, in particular on the benefit of mobile account-opening. I should mention that S. 2155 ameliorated many of the issues I raised in my 2015-2016 public writings. Staff for several Democratic members of the Banking Committee can attest to my willingness to craft bipartisan legislation. My Senate experience includes, as with all Banking staffers, countless meetings and discussions with constituent credit unions. In the case of Arkansas, this primarily involved the Cornerstone Credit Union League (which encompasses 550 credit unions in

AR, TX & OK) and the Arkansas Credit Union Association. The leaders of those organizations can attest to my knowledge and attentiveness to their concerns. Most recently, my work has centered on the COVID-19 pandemic and the various ways credit unions have been affected, such as helping them work with small business loans via the SBA's Paycheck Protection Program (PPP). Other pandemic-related concerns include the initially-confusing receipt of Economic Impact Payments, as well as credit union's economic stress related to personal and business loans on credit union balance sheets.

If confirmed, my experience and education will serve me well as NCUA Board member. I've worked well with Republicans and Democrats on many financial policy issues, and will continue to do so at NCUA to promote the safety and soundness of the nearly 6000 credit unions and their 100+ million members.

**Future employment
relationships:**

1. Indicate whether you will sever all connections with your present employer, business, firm, association or organization if you are confirmed by the Senate.

Yes, if confirmed I will sever all connections with my present employer.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no plans after completing government service to resume employment with my previous employers. I may decide to seek future employment, but any such employment would be consistent with all applicable federal laws, ethics regulations and related guidance and pledges.

3. Has anybody made you a commitment to a job after you leave government?

No, I have not received any commitments for employment following government service.

4. Do you expect to serve the full term for which you have been appointed?

Yes. If confirmed, I plan to serve the full term for which I have been appointed.

**Potential conflicts
of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

I have no financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which I will influence. If confirmed, I will work with the Office of the Chief Ethics Officer at the National Credit Union Administration to ensure that there is an appropriate plan in place to avoid any conflicts of interest.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

I have no investments which might lead to a potential conflict of interest. If confirmed, I will work with the Office of the Chief Ethics Officer at the National Credit Union Administration to ensure that there is an appropriate plan in place to avoid any conflicts of interest.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

I have no such business relationship that may constitute or result in a possible conflict of interest. If confirmed, I will work with the Office of the Chief Ethics Officer at the National Credit Union Administration to ensure that there is an appropriate plan in place to avoid any conflicts of interest.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

I have never engaged in lobbying.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

I have no conflicts of interests. If confirmed, I will work with the Office of the Chief Ethics Officer at the National Credit Union Administration to ensure that there is an appropriate plan in place to avoid any conflicts of interest.

**Civil, criminal and
investigatory
actions:**

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

I have not been subject to any civil or criminal proceeding or any inquiry by Federal, State or local agency.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

I have not been party to any proceeding, inquiry or investigation by any professional association.

**COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE**

Room SD-534 Dirksen Senate Office Building
Washington, D.C. 20510
(202) 224-7391

Addendum

At the advice of the NCUA Office of Ethics Counsel as well as the Office of Government Ethics, I listed "Unmarried" for Marital Status. The submitted form states that my Marital Status is Unmarried and "n/a" for Spouse, which is accurate. I'd like to note that I have a long-term domestic partner, Kelly Rzendzian, an appointee at the Department of Commerce, and I wanted to provide this information as an addendum for the committee.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN
FROM HESTER PEIRCE**

Q.1. Last year, I introduced S. 2155, the Stop Wall Street Looting Act of 2019, to reform the private equity industry and end abusive leveraged buyouts.¹

Private equity transactions are fueled by risky loans that are immediately securitized and sold.² A provision in my bill would help protect the economy from risks stemming from excessive debt imposed on private equity firms' target companies. It would require arrangers of corporate loan securitizations to retain risk by clarifying that managers of collateralized debt obligations are subject to risk retention requirements established in the Dodd–Frank Wall Street Reform and Consumer Protection Act.³

Do you believe that arrangers of corporate loan securitizations should retain risk to prevent dangerous loans that are immediately passed onto unknowing investors?

A.1. Dodd–Frank's risk retention provisions seek to align the interests of originators of loans with the investors in loan securitizations. Investors might benefit from—and could demand—similar alignment from non-originating managers of securitizations, but that alignment could be more costly to achieve than it would be for an originating manager, and these costs would be passed on to the investors. Alignment of interests through other means, such as performance-based compensation agreements, might be cheaper and have proved effective in the past. In 2018, the United States Court of Appeals for the District of Columbia held that Dodd–Frank's risk retention provisions do not reach non-originating managers of collateralized loan obligation securitizations.⁴ That said, if Congress directs the SEC and other regulators to apply the risk retention rules to all arrangers of corporate loan securitizations, I will work to put that mandate in place.

Q.2. If not, how, if at all, you would you mitigate risky corporate lending and the ability of lenders to spread private equity debt across financial institutions? How would you ensure that regulators have the appropriate information to assess the exposure of financial markets to leveraged loans?

A.2. From the SEC's vantage point as a securities regulator, the SEC has several points of interaction with the Collateralized Loan Obligation (CLO) marketplace. First, we have brought actions against private equity advisers for violating the securities laws. Second, sales of asset-backed securities, including those backed by loans, are subject to the securities laws. Third, we oversee the agencies that rate CLOs. Finally, the SEC has been working to un-

¹ Office of Senator Warren, "Warren, Baldwin, Brown, Pocan, Jayapal, Colleagues Unveil Bold Legislation to Fundamentally Reform the Private Equity Industry", July 18, 2019, <https://www.warren.senate.gov/newsroom/press-releases/warren-baldwin-brown-pocan-jayapal-colleagues-unveil-bold-legislation-to-fundamentally-reform-the-private-equity-industry>.

² *Washington Post*, "The Shadow Banks Are Back With Another Big Bad Credit Bubble", Steven Pearlstein, May 31, 2019, <https://www.washingtonpost.com/business/economy/the-shadow-banks-are-back-with-another-big-bad-credit-bubble/2019/05/31/a05184de-817a-11e9-95a9-e2c830afe24f-story.html>.

³ Securities and Exchange Commission, "Asset-Backed Securities", October 23, 2014, <https://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtml>.

⁴ *Loan Syndications & Trading Ass'n*, 882 F.3d 220 (D.C. Cir. 2018).

derstand better the CLO markets, including which entities hold the different tranches of CLOs. In our work in this area, we have benefited from the work of our Investor Advisory Committee and collaboration with other regulators, here and abroad.

Q.3. *Leveraged Lending*—In November 2018, I sent a letter to SEC Chairman Clayton, Treasury Secretary Steven Mnuchin, Federal Reserve Chairman Jerome Powell, then-Comptroller of the Currency Joseph Otting, and Federal Deposit Insurance Corporation Chairman Jelena McWilliams expressing concern about the rapid growth of leveraged corporate lending, or lending to companies that are already highly indebted.⁵

In a section addressed to Chairman Clayton, I stated that the Volcker Rule is intended to restrict bank involvement with external funds and that trade associations have asked the SEC to significantly loosen Volcker Rule controls. The SEC completed its rollbacks of the Volcker Rule in September 2019, which you strongly supported.⁶ In response to the rollback of the Volcker Rule, SEC Commissioner Robert J. Jackson, Jr., stated, “as I said at the proposal stage, ‘[r]olling back the Volcker Rule while failing to address pay practices that allow bankers to profit from proprietary trading puts American investors, taxpayers, and markets at risk.’”⁷

Chairman Clayton’s January response provided a procedural, but not a substantive, explanation of the status of SEC’s proposed amendments to the Volcker Rule.⁸

Do you view leveraged lending as a risk? If so, what actions should the SEC take to mitigate the risks associated with leveraged lending?

A.3. Leveraged lending merits watching. As noted above, it is an area that the SEC and other regulators are actively monitoring. Among other things, we monitor our regulated entities’ exposure to leveraged loans, particularly loans with lower credit quality.

Q.4. Please explain the SEC’s rationale for removing protections against excessive risks under the Volcker Rule.

A.4. The SEC joined with other financial regulators to revisit the Volcker Rule. The changes came in response to concerns that the rule was inhibiting beneficial activity by banking entities. Working with our fellow regulators, we determined that there were ways to achieve the Volcker Rule’s objectives in a less costly manner. Among other concerns, I was worried that the rule was preventing banking entities from engaging in traditional lending and market

⁵ Letter from Senator Warren to Treasury Secretary Steven Mnuchin, Federal Reserve Chairman Jerome Powell, Comptroller of the Currency Joseph Otting, Securities and Exchange Commission Chairman Jay Clayton, and Federal Deposit Insurance Corporation Chairman Jelena McWilliams, November 14, 2018, <https://www.warren.senate.gov/imo/media/doc/2018.11.14%20Letter%20to%20Regulatorhttps://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtml%20on%20Leveraged%20Lending.pdf>.

⁶ U.S. Securities and Exchange Commission, “Statement on Volcker Rule Amendments”, Public Statement by Commissioner Robert J. Jackson, Jr., September 19, 2019, <https://www.sec.gov/news/public-statement/statement-jackson-091919>; U.S. Securities and Exchange Commission, “SEC Adopts New Rules and Amendments under Title VII of Dodd–Frank”, press release, September 19, 2019, <https://www.sec.gov/news/press-release/2019-182>.

⁷ U.S. Securities and Exchange Commission, “Statement on Volcker Rule Amendments”, Public Statement by Commissioner Robert J. Jackson, Jr., September 19, 2019, <https://www.sec.gov/news/public-statement/statement-jackson-091919>.

⁸ Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, January 31, 2019.

making activities. The amendments simplify, clarify, and tailor the rule without undermining its objective.

Q.5. Commissioner Jackson also stated, “The Commission has justified the rollback of the significant investor- and taxpayer-protections in the Volcker Rule in the name of needed improvements in ‘liquidity and capital formation.’ Because the facts and our own Staff’s analysis offer no meaningful evidence that the Volcker Rule has affected either, I respectfully dissent.”⁹

Please describe any evidence that the amendments rolling back the Volcker Rule are beneficial to the safety and security of securities markets.

A.5. In connection with each of the Volcker rulemakings, we engaged in economic analysis. While there are limitations on this forward-looking analysis, it helped us to identify areas where a change in the implementing regulations could enable banking entities to engage in activities that are beneficial to market liquidity and consistent with the Volcker Rule. I had particular concerns that the Volcker Rule was adversely affecting market making, which is essential to well-functioning markets.¹⁰ Simplifying rules, which is what the Volcker amendments sought to accomplish, removes legal uncertainty and therefore gives market participants confidence to participate in markets. Strained liquidity in fixed income markets over the last 6 months suggests that it is very important for us to continue examining the Volcker Rule to ensure that it is properly calibrated to achieve its important objectives without impairing market function.

Q.6. *Inflated Bond Ratings*—In September, I wrote Chairman Clayton a letter regarding troubling reports of inflated bond ratings and the perverse incentives within the bond rating industry and urged the SEC to take immediate action to protect the economy from risky lending propped up by conflicts of interest between bond issuers and rating agencies.

My letter described the flows in the incentive structures of bond ratings firms’ through the “issuer-pays” model used by major firms like S&P and Moody’s. Under the issuer-pays model, bond issuers pay the agencies for their assessments of the products they hope to sell, ultimately giving the rating firms an incentive to give better ratings, regardless of the risk, since bond issuers might otherwise go to their competitors.¹¹ In his November response, Chairman Clayton stated that he shared my concerns about conflicts of interest in rating agency compensation models and said that he is awaiting recommendations or advice from various advisory committees.¹²

⁹Id.

¹⁰See, e.g., Meraj Allahrakah, et al., “The Effects of the Volcker Rule on Corporate Bond Trading: Evidence From the Underwriting Exemption”, OFR Working Paper (Aug. 6, 2019), available at <https://www.financialresearch.gov/working-papers/2019/08/06/the-effects-of-the-volcker-rule-on-corporate-bond-trading/>; Jack Bao et al., “The Volcker Rule and Market Making in Times of Stress”, Federal Reserve Working Paper (Sept. 2016), available at <https://www.federalreserve.gov/econresdata/feds/2016/files/2016102pap.pdf>.

¹¹Council on Foreign Relations, “The Credit Rating Controversy”, CFR Staff, February 19, 2015, <https://www.cfr.org/background/credit-rating-controversy>.

¹²Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, November 21, 2019.

Have senior officials the SEC instructed the advisory committees that the SEC is consulting for recommendations or advice on the role and activities of bond rating agencies to produce any work products by a certain date or timeline?

A.6. Since your exchange of letters with Chairman Clayton, the Fixed Income Advisory Committee provided us recommendations with respect to credit rating agencies. Specifically, in June 2020, the Committee recommended that the SEC: (1) increase disclosure by Nationally Recognized Statistical Rating Organizations (NRSROs), (2) enhance issuer (corporate and securitized) disclosures, and (3) create a mechanism for bondholders to vote on the issuer-selected NRSROs.¹³ In May 2020, the SEC's Investor Advisory Committee held a panel discussion regarding credit rating agencies.¹⁴

Q.7. If so, please explain the SEC's instructions and any requested deadlines. Additionally, please explain if these recommendations or advice will be made public.

A.7. The Fixed Income Advisory Committee's recommendations are publicly available.¹⁵ The Investor Advisory Committee might submit a recommendation in the future, but the Commission does not dictate their agenda or work schedule. If the IAC does make a recommendation, it will be publicly available on the SEC's website.¹⁶

Q.8. Please describe any updates from the advisory committees that the SEC is consulting for recommendations or advice regarding the role and activities of bond rating agencies. Please describe any communications you, or senior SEC staff, have had with these advisory committees regarding any anticipated timelines or deadlines for their conclusions.

A.8. In June 2020, the Fixed Income Advisory Committee recommended that the SEC: (1) increase disclosure by Nationally Recognized Statistical Rating Organizations (NRSROs), (2) enhance issuer (corporate and securitized) disclosures, and (3) create a mechanism for bondholders to vote on the issuer-selected NRSROs.¹⁷ In May 2020, the SEC's Investor Advisory Committee held a panel discussion regarding credit rating agencies.¹⁸ I have not communicated with the advisory committees regarding anticipated timelines or deadlines and am not aware of any specific communications on those matters by others at the Commission.

¹³ Fixed Income Market Structure Advisory Committee, "Recommendations Regarding Ways To Mitigate Conflicts of Interest in Credit Ratings" (June 1, 2020), available at <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendations-credit-ratings-subcommittee.pdf>.

¹⁴ Investor Advisory Committee (May 21, 2020), agenda available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac052120-agenda.htm>, and webcast available at <https://www.sec.gov/video/webcast-archive-player.shtml?document-id=iac052120>.

¹⁵ Ways to Mitigate Conflicts of Interest in Credit Ratings (June 1, 2020), available at <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendations-credit-ratings-subcommittee.pdf>.

¹⁶ Spotlight on the Investor Advisory Committee, <https://www.sec.gov/spotlight/investor-advisory-committee.shtml> (recommendations are at the bottom of the page).

¹⁷ Fixed Income Market Structure Advisory Committee, "Recommendations Regarding Ways To Mitigate Conflicts of Interest in Credit Ratings" (June 1, 2020), available at <https://www.sec.gov/spotlight/fixed-income-advisory-committee/fimsac-recommendations-credit-ratings-subcommittee.pdf>.

¹⁸ Investor Advisory Committee (May 21, 2020), agenda available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac052120-agenda.htm>, and webcast available at <https://www.sec.gov/video/webcast-archive-player.shtml?document-id=iac052120>.

Q.9. Chairman Clayton’s response also referenced some work that the SEC has done to respond to the conflicts of interest in the issuer-pays model.¹⁹ An August *Wall Street Journal* report, however, stated that “Inflated bond ratings were one cause of the financial crisis. A decade later, there is evidence they persist. In the hottest parts of the booming bond market, S&P and its competitors are giving increasingly optimistic ratings as they fight for market share.”²⁰

In your view, why has the SEC’s efforts to respond to the conflicts of interest have failed to prevent bond rating agencies from artificially inflating bond ratings?

A.9. The SEC has a robust and detailed regulatory framework governing NRSROs. The rules require NRSROs among other things, to implement internal controls, manage their conflicts of interest, have a compliance function, and make certain disclosures. The SEC’s Office of Credit Ratings conducts annual examinations of the NRSROs. We also have brought enforcement actions against NRSROs.²¹ While our rules governing NRSROs are robust, we are statutorily prohibited from prescribing the substance of credit ratings or the methodologies by which they are produced.²² We continue to review our regulatory framework to ensure that it appropriately addresses conflicts of interest and allows new entrants to come into the industry.

Q.10. Chairman Clayton’s November response also stated, “I expect to continue to discuss issues related to the [collateralized loan obligations], other credit funds and conditions in the credit markets more generally in the near term with my national and international regulatory colleagues, including through the [Financial Stability Oversight Council] and the [Financial Stability Board]. I will also request our staff in [the SEC Office of Credit Ratings], as well as staff in the Division of Investment Management and Division of Trading and Markets, to keep the issues you raised in your letter in mind as they carry out their examination and other responsibilities.”²³

Please describe any near-term discussions you have had with national and international regulatory colleagues on this topic.

A.10. As the SEC’s representative on the Financial Stability Board’s Standing Committee on Assessment of Vulnerabilities (SCAV), I have had the opportunity to discuss issues related to credit ratings and the use of credit ratings by market participants, particularly during the economic stress we are now experiencing. The SCAV is seeking to coordinate its work in this area with the work of other international organizations, such as the International Organization of Securities Commissions.

¹⁹Id.

²⁰*Wall Street Journal*, “Inflated Bond Ratings Helped Spur the Financial Crisis. They’re Back,” Cezary Podkul and Gunjan Banerji, August 7, 2019, <https://www.wsj.com/articles/inflated-bond-ratings-helped-spur-the-financial-crisis-theyre-back-11565194951>.

²¹See, e.g., “SEC Orders Credit Rating Agency To Pay \$3.5 Million for Conflicts of Interest Violations” (May 15, 2020), <https://www.sec.gov/news/press-release/2020-112>.

²²See Section 15E(c)(2) of the Securities Exchange Act of 1934, 15 U.S.C. §78o-7(c)(2).

²³Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, November 21, 2019.

Q.11. Please describe any communications you have had with SEC staff regarding these issues.

A.11. I receive regular updates from the Office of Credit Ratings on their oversight of NRSROs and on major credit rating actions the NRSROs take. I consult with the staff from time to time about issues related to conflicts of interest at NRSROs.

Q.12. *Climate Risk Disclosure*—In July, Representative Sean Casten (D-IL-06) and I introduced H.R. 3623/S. 2017, the Climate Risk Disclosure Act of 2019.²⁴ Our bill would address the fact that investors currently lack access to basic information about the potential impact of the climate crisis on American companies, which creates significant environmental and financial risks. The Climate Risk Disclosure Act of 2019 would require public companies to include uniform information about their exposure to climate-related risks, which will help investors appropriately assess those risks, among other benefits, in their disclosures to the SEC.

The most recent volume of the National Climate Assessment, a scientific report issued by 13 Federal agencies in November 2018, stated that climate change may cause losses of up to 10 percent of the U.S. economy by 2100.²⁵ Additionally, a 2015 report from *The Economist Intelligence Unit* wrote that, of the world's current stock of manageable assets, the expected losses due to climate change are valued at \$4.2 trillion by the end of the century.²⁶

Do you believe that understanding which assets of public companies may be materially affected by climate change may help investors make more informed decisions about the risk of their investments?

A.12. Yes, this disclosure could be useful to investors if it is material. Our principles-based disclosure approach is designed to elicit from public companies material information about risks to the long-term value of the company arising from events, including climate-related events.

Q.13. Do you believe it would be useful for investors to understand public companies' contributions to greenhouse gas emissions and their exposure in the event of a Government- or market-mandated transition towards a lower-carbon economy?

A.13. The principles-based disclosure framework is intended to elicit company-specific disclosure about material risks to the long-term financial value of the company, including risks from Government regulation. Regulation that limits greenhouse gas emissions could trigger disclosure obligations related to greenhouse gas emissions for some companies under existing regulation.²⁷

²⁴ Office of Senator Warren, "Senator Warren, Representative Casten Lead Colleagues Introducing a Bill To Require Every Public Company To Disclose Climate-Related Risks", press release, July 10, 2019, <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-representative-casten-lead-colleagues-introducing-a-bill-to-require-every-public-company-to-disclose-climate-related-risks>.

²⁵ *New York Times*, "U.S. Climate Report Warns of Damaged Environment and Shrinking Economy", Coral Davenport and Kendra Pierre-Louis, November, 23, 2018, <https://www.nytimes.com/2018/11/23/climate/us-climate-report.html>.

²⁶ *The Economist Intelligence Unit*, "The Cost of Inaction", 2015, p. 41, <https://eiuperspectives.economist.com/sites/default/files/The%20cost%20of%20inaction-0.pdf>.

²⁷ See, e.g., "Commission Guidance Regarding Disclosure Related to Climate Change" (Feb. 2, 2010), available at <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.

Q.14. A Government Accountability Office (GAO) report from February 2018 states, “[Securities and Exchange Commission (SEC)] reviewers may not have access to the detailed information that companies use to arrive at their determination of whether risks, including climate-related risks, must be disclosed in their SEC filings.”²⁸ While the SEC has issued guidance for considering effects of climate change, the SEC has not mandated disclosures for how climate risk materially affects returns.

If Federal regulators do not have the information needed to fully understand public companies’ climate-related risks under current law, do investors have the adequate information needed to make informed decisions about companies’ risks?

A.14. The SEC’s Division of Corporation Finance has a filing review process whereby the staff selectively reviews filings both to monitor and to enhance compliance with disclosure and accounting requirements under the securities laws. With respect to climate change and other issues about which disclosure might be required, Corporation Finance staff does not have subpoena power and does not require companies to provide the SEC with information to engage in an independent assessment of the adequacy of the companies’ disclosure. Nevertheless, there is a robust iterative process between SEC staff reviewing filings and counsel for the companies whose disclosure is being reviewed. Importantly, companies face legal liability for disclosure that is materially false or misleading.

Q.15. *Regulation Best Interest (Reg BI)*—In June 2019, SEC approved Reg BI, which despite Congress’ instruction in sections 913(f) and 913(g) of the Dodd–Frank Wall Street Reform and Consumer Protection Act establishes neither a uniform standard for broker-dealers and investment advisers, nor a fiduciary standard for broker-dealers.²⁹ Then-Commissioner Robert J. Jackson, Jr., described the rule as “a muddled standard that exposes millions of Americans to the costs of conflicted advice.”³⁰ Reg BI includes no obligation to eliminate conflicts of interest. The SEC clearly stated, “we are not requiring broker-dealers to develop policies and procedures to disclose and mitigate all conflicts of interest.”³¹ Instead, Reg BI imposes a limited requirement to disclose conflicts.

The SEC rule left “best interest,” the key term that describes the standard of conduct for broker-dealers, undefined.³²

Do you believe the standard should have defined “best interest,” as several commenters on the rule discussed?³³

²⁸ Government Accountability Office, “Climate-related Risks”, February 2018, pp. 17–18, <https://www.gao.gov/assets/700/690197.pdf>.

²⁹ U.S. Securities and Exchange Commission, “SEC Adopts Rules and Interpretations To Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Financial Professionals”, press release, June 5, 2019, <https://www.sec.gov/news/press-release/2019-89>.

³⁰ U.S. Securities and Exchange Commission, “Statement on Final Rules Governing Investment Advice”, Public Statement by Commissioner Robert J. Jackson, Jr., June 5, 2018, <https://www.sec.gov/news/public-statement/statement-jackson-060519-iabd>.

³¹ U.S. Securities and Exchange Commission, *Federal Register* Final Rule, “Regulation Best Interest: The Broker-Dealer Standard of Conduct”, July 12, 2019, pp. 33388, <https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12164.pdf>.

³² U.S. Securities and Exchange Commission, *Federal Register* Notice, “Regulation Best Interest: The Broker-Dealer Standard of Conduct”, July 12, 2019, <https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct>.

³³ *Id.*

A.15. No. A more principles-based approach is better suited to reach the wide array of facts and circumstances that arise in interactions between retail investors and broker-dealers.

Q.16. Why did the SEC decline to define “best interest?”

A.16. Speaking for myself, I was concerned that defining best interest could inadvertently limit the standard’s effectiveness. Because the relationships between retail customers and their broker-dealers are not uniform, it is important to have a standard that can cover a wide range of interactions. Moreover, it is important that broker-dealers understand that this standard is not a check-the-box standard; it is a standard they need to internalize so that it governs all their dealings with and actions on behalf of customers.

Q.17. Reg BI states if “a broker-dealer cannot fully and fairly disclose a conflict of interest,” a broker-dealer “should eliminate the conflict or adequately mitigate the conflict,” but it does not define what adequate mitigation looks like.³⁴

Why did the SEC decline to define adequate mitigation in Reg BI?

A.17. I can only speak for myself. Mitigation is not a one-size-fits-all tool. Rather, a broker-dealer needs to assess its conflicts and determine whether eliminating them is necessary or mitigation is possible. I wanted broker-dealers to have the flexibility to develop and tailor reasonably designed mitigation measures based on their circumstances, including size, the nature of their retail customer base, and the complexity of the recommended security or investment strategy. I also wanted broker-dealers to know that they cannot “set it and forget it,” but must review mitigation measures, in light of experience, to make sure they are still working.

Q.18. How do you define adequate mitigation?

A.18. In general, adequate mitigation means that the conflict of interest is reduced to ensure that the customer is protected, but what that means precisely differs along with the facts and circumstances. The adequacy of the mitigation depends on, for example, the size, retail customer base, nature and significance of the conflict, and complexity of the product. What is adequate in a small firm with a sophisticated retail investor base, for example, may not be adequate for a large firm with a wider range of retail customers. Some conflicts in some situations can be mitigated by disclosure, while in other situations additional measures—such as a surveillance program to monitor sales activity near compensation thresholds—might be necessary. Other measures that might adequately mitigate a conflict include (but are not limited to) minimizing compensation incentives that favor one product over another, avoiding compensation schemes in which an incremental increase in sales can disproportionately increase compensation, and tying compensation to appropriate management of conflicts of interest.

Q.19. In your view, what if any distinction exists between the “best interest” standard of conduct set forth in the SEC rule and the

³⁴ U.S. Securities and Exchange Commission, *Federal Register* Notice, “Regulation Best Interest: The Broker-Dealer Standard of Conduct”, July 12, 2019, <https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct>.

“suitability” standard established by the Financial Industry Regulatory Authority that predated it?³⁵

A.19. Although the best interest standard contains elements of the suitability standard, it is a broader, more holistic standard. FINRA’s suitability standard required broker-dealers, in making a recommendation, to “have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the broker-dealer or associated person to ascertain the customer’s investment profile.”³⁶ The best interest standard applies more broadly and imposes an overarching obligation for broker-dealers to act in the best interest of their retail customers and not place their own interest ahead of the retail customer’s interest. Under the best interest standard, a broker-dealer must comply with four obligations—Disclosure, Care, Conflict of Interest, and Compliance—each of which has specific regulatory components.

Q.20. In response to the SEC’s proposal for Reg BI, a bipartisan group of 11 former SEC senior economists wrote in a comment, “[w]e find it worrisome that the proposals’ economic analysis does not fully consider some potentially important dimensions of the retail client–adviser relationship.”³⁷

Do you believe the cost-benefit analysis that supports Reg BI was sufficient?

A.20. The economic analysis supporting the adoption of Reg BI was extensive. The Commission drew on comments received in response to the proposal to develop a more robust economic analysis in connection with the adoption of the rule. That analysis discusses more fully the potential problems associated with broker-dealers’ provision of recommendations to retail customers, the economic literature on financial advice, and the effectiveness of the disclosure requirements of Regulation Best Interest. That said, any economic analysis of a prospective rule involves assumptions, uncertainties, and data gaps. Now that the rule has taken effect, we will have the opportunity to assess whether it is working as intended.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM HESTER PEIRCE

Q.1. What are the personal and professional costs to whistleblowers that concern you? How can the SEC mitigate those concerns?

A.1. Whistleblowers have proven to be valuable contributors to our enforcement program. In order to come forward to us, a whistleblower may face personal and professional repercussions.

Consequences for a whistleblower can include losing a job; reputational damage in the industry, which can make finding a

³⁵ Financial Industry Regulatory Authority, “Suitability”, Accessed July 23, 2020, <https://www.finra.org/rules-guidance/key-topics/suitability>.

³⁶ FINRA Rule 2111(a).

³⁷ Carnegie Mellon University, “Professor Chester Spatt Criticizes Proposed SEC Regulation”, press release, February 25, 2019, <https://www.cmu.edu/tepper/news/stories/2019/february/chester-spat-sec-regulation.html>.

new job difficult; suffering rejection by friends and colleagues; and threats or harassment. These consequences of whistleblowing concern me.

Through our whistleblower program, we seek to both adequately reward meritorious whistleblowers and sufficiently incentivize future whistleblowers. Since the program started, the SEC had awarded approximately \$505 million to 87 whistleblowers.¹ Whistleblower awards cannot compensate for all of these adverse consequences, but can make up for lost income—past and future. In addition, we provide a means for whistleblowers to come to us anonymously, which can reduce adverse consequences. The SEC can take legal action against employers who have retaliated against whistleblowers by discharging, demoting, suspending, harassing, or in any way discriminating against an employee who reported conduct that the employee reasonably believed violated the Federal securities laws. Our rules also prohibit actions taken to impede a whistleblower.

Q.2. How will including deferred prosecution agreements and non-prosecution agreements as “actions” ensure whistleblowers are not penalized as a result of the Government’s decision to pursue a particular litigation strategy?

A.2. In a 2018 proposal to amend the whistleblower rules, the Commission proposed explicitly to include deferred prosecution agreements and nonprosecution agreements as actions to ensure that whistleblowers are not disadvantaged because of the particular form of action selected by the Commission, the Department of Justice, or a State attorney general.² Under the proposed amendment, the Commission would be able to make award payments to whistleblowers based on money collected as a result of such DPAs and NPAs, as well as under settlement agreements entered into by the Commission outside of the context of a judicial or administrative proceeding to address violations of the securities laws. Explicitly including these actions could enhance our ability to compensate whistleblowers adequately for coming forward in situations when the Government does not proceed with a formal judicial or administrative proceeding.

Q.3. Should the SEC ensure that legitimate and honest reports do not lead to retaliation for a whistleblower?

A.3. Yes, antiretaliation provisions are a central component of our whistleblower program. We protect whistleblowers from discharge, demotion, suspension, threats, harassment, and discrimination in the terms or conditions of employment. We have brought enforcement actions based on retaliatory conduct and based on actions taken to impede reporting.³

Q.4. Will you ensure that whistleblower awards are paid out at the highest amount possible so that it matches or exceeds the overall costs to whistleblowing?

¹ SEC Issues \$3.8 Million Whistleblower Award, SEC Press Release No. 2020-155 (July 14, 2020), available at <https://www.sec.gov/news/press-release/2020-155>.

² Amendments to the Commission’s Whistleblower Program Rules, Exchange Act Release No. 83557 (June 29, 2018) [83 FR 34702, 34705 (July 20, 2018)].

³ See, e.g., Office of the Whistleblower, <https://www.sec.gov/whistleblower/retaliation#enforcement-actions>.

A.4. I have been very supportive of the whistleblower program and will continue to seek to ensure, consistent with the statutory authorization, that whistleblowers receive awards that adequately compensate them. Section 21F of the Exchange Act authorizes the SEC to make monetary awards to eligible individuals who voluntarily provide original information that leads to successful SEC enforcement actions resulting in monetary sanctions over \$1 million and successful related actions. Awards must be made in an amount equal to 10 to 30 percent of the monetary sanctions collected. In voting on awards within these ranges, I take into account the criteria set forth in the statute and our rules, including the unique hardships the whistleblower endured as a result of being a whistleblower.

Q.5. What is the SEC doing to increase shareholder voting and participation? How is the SEC ensuring votes are accurately tabulated?

A.5. The SEC is undertaking a broad review of the proxy voting process in order to ensure that shareholders are able to engage with corporations, vote, and have confidence that their votes are counted. These efforts began with a 2010 concept release on the proxy system⁴ and a roundtable in 2018.⁵ Because many retail investors hold their shares through funds or otherwise delegate their voting authority, the SEC issued guidance to remind investment advisers that, when they exercise voting authority on behalf of a client, they have a fiduciary duty to vote the shares consistent with the client's objectives.⁶ In addition, last week, the SEC adopted rule changes to ensure that investors and others who vote on their behalf receive more transparent, accurate, and complete proxy voting advice.⁷ Following the proxy roundtable, staff in the SEC's Division of Corporation Finance have been working with participants in the proxy voting process to generate ideas about improving the voting process and ensuring that it accurately captures shareholders' votes. New technologies, including blockchain, might be helpful in this regard. Rulemakings regarding proxy plumbing, modernization of the shareholder proposal process, and universal proxy are on our short-term agenda.⁸ Finally, our Office of Investor Advocate and Office of Investor Education and Advocacy engage with investors across the country on issues regarding voting.⁹

Q.6. How will you ensure that entities you oversee consider the impact of increasingly severe storms, floods, and fires on their firms? How will you ensure corporations are adequately planning and accounting for widespread and potentially costly damage to property

⁴ Concept Release on the U.S. Proxy System, Release No. 34-62495 (Jul. 14, 2010) [75 FR 42982 (July 22, 2010)].

⁵ Roundtable on the Proxy Process (Nov. 15, 2018), available at <https://www.sec.gov/files/proxy-round-table-transcript-111518.pdf>.

⁶ "Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers", Release No. IA5325 (Aug. 21, 2019), [84 FR 47420 (Sept. 10, 2019)].

⁷ Exemptions from Proxy Rules for Proxy Voting Advice, Release No. 34-89372 (July 22, 2020), available at <https://www.sec.gov/rules/final/2020/34-89372.pdf>.

⁸ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=3235-AM16>, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=3235-AL84>, and <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=3235-AM49>.

⁹ See, e.g., SEC, "What Are the Mechanics of Voting Either in Person or by Proxy?", <https://www.investor.gov/what-are-mechanics-voting-either-person-or-proxy>.

serving as collateral for loans or to assets underpinning other investments?

A.6. The entities we regulate, such as broker-dealers, investment advisers, stock exchanges, and clearing agencies, have business continuity plans in place to deal with natural disasters. These business continuity plans are one thing our Office of Compliance Inspections and Examinations looks at in its exams.¹⁰ Registrants' business continuity plans have been tested recently in events like Hurricane Sandy and the ongoing COVID-19 crisis. While we lack authority to require issuers of securities to mitigate risks that they may face from severe weather or other events, we do require them to assess and disclose to investors material information, including the risks they face, including risks to their property and other assets. Indeed, the Commission provided guidance on this topic in 2010 to remind registrants that are vulnerable to severe weather events to consider the need to disclose material risks of or consequences from such events in their publicly filed disclosure documents.¹¹

Q.7. Do you think corporate disclosure of climate change risks is adequate to inform investors of the economic and corporate resilience to climate change?

A.7. Our principles-based disclosure regime is generally effective at producing disclosure that is material to investors. Climate change risks are not uniform across companies, and assessments of those risks are based on assumptions and models that are not static. Thus, corporate disclosure is likely to change and improve over time as underlying assumptions, scientific understanding, and modeling techniques improve. As with many other risks companies face, our principles-based disclosure regime is intended to facilitate dynamic, company-specific disclosure that reflects management's analysis of risks.

Q.8. What are the environmental transition risks for corporations? What costs can they be expected to incur as the world works to reduce its carbon footprint to mitigate global warming?

A.8. Transition risks differ vastly across industries, and over time these risks may change. For example, energy companies face risks and opportunities from Government policy that favors or disfavors certain types of energy. Other companies may see their energy, travel, and building costs rise in response to Government regulation of carbon emissions. Still other companies may find that regulation prevents them from conducting or funding research and development on the most promising innovations. Our principles-based disclosure regime is designed to elicit disclosure from companies that reflects management's understanding of the unique risks and opportunities they face based on their unique facts and circumstances, including the regulatory frameworks within which they operate.

¹⁰"SEC Examinations of Business Continuity Plans of Certain Advisers Following Operational Disruptions Caused by Weather-Related Events Last Year" (Aug. 27, 2013), available at <https://www.sec.gov/about/offices/ocie/business-continuity-plans-risk-alert.pdf>.

¹¹See, e.g., "Commission Guidance Regarding Disclosure Related to Climate Change" (Feb. 2, 2010), available at <https://www.sec.gov/rules/interp/2010/33-9106.pdf>.

Q.9. How can the SEC promote a long-term focus among publicly traded companies?

A.9. The SEC can best achieve the objective of ensuring that public companies focus on long-term value maximization by resisting efforts to dilute the fiduciary obligations of corporate managers and directors. Corporate governance, which plays an important role in determining whether companies have a long-term focus, is primarily a matter of State law. Nevertheless, the SEC's disclosure mandates, when designed to meet the needs of constituencies other than investors, can have the effect of diverting management and board attention from long-term value creation. The SEC can avoid this problem by focusing on getting investors information that is material to them. The SEC also is considering whether changes to its quarterly reporting regime would help to mitigate concerns about a short-term focus by public companies.¹² This effort follows a roundtable the SEC's Division of Corporation Finance hosted last year on the topic of "Short-Term/Long-Term Management of Public Companies."¹³

Q.10. Please explain why you did not approve monetary penalties or industry bans for individuals who were subject to an enforcement action in the first 6 months of 2020?

A.10. The following table sets forth votes made public in the first six months of 2020 in which I did not vote in support of a monetary penalty or industry bar against an individual.

¹² See, "Request for Comment on Earnings Releases and Quarterly Reports", <https://www.sec.gov/rules/other/2018/33-10588.pdf> (Dec. 18, 2018) ("Some have suggested that the practice of providing quarterly forward-looking earnings guidance creates an undue focus on short-term financial results and thereby negatively affects the ability of companies to focus on long-term results. Is this the case and, if so, are there changes we could make to our rules that would discourage this practice or address this concern?"). See also <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=3235-AM40>.

¹³ Roundtable on Short-Term/Long-Term Management of Public Companies (July 18, 2019), available at <https://www.sec.gov/video/webcast-archive-player.shtml?document-id=roundtable-short-long-term-071819>.

Date of Commission Action	Release Number	Name of Enforcement Matter	Individual at Issue	Penalty or Industry Ban at Issue	Reason for No Vote
1/7/20	34-87904	DJB Holdings, Inc.	Bradley C. Mascho	Penny Stock Bar	The underlying violation was not related to penny stocks, and there was no carve-out for personal trading.
1/10/20	34-87933	Guardian Oil and Gas, Inc.	Rick D. Mullins	Penny Stock Bar	The underlying violation was not related to penny stocks, and there was no carve-out for personal trading.
1/15/20	34-87968	Nissan Motor	Gregory L. Kelly	Suspension from appearing or practicing before the Commission as an attorney for 5 years.	The alleged underlying violations lacked a sufficient nexus to the United States.
1/17/20	Lit. Rel. 24721	SEC v. Markel	Daniel Markel	Injunction, Disgorgement, Interest, Penalty	I did not believe that the evidence supported the charges.
1/27/20	IA-5436	Catalyst Hedged Futures Strategy Fund	Jerry Szilagyi	Penalty	The \$300,000 penalty was disproportionate to the role allegedly played by Mr. Szilagyi in the

					underlying conduct.
1/30/20	34-88104	Sobriety and Addiction Solutions	Daniel Markel	Industry bars and Penny Stock bar	I did not support the underlying charges.
2/5/20	34-88119	Gordon Caplan	Gordon Caplan	Suspension from appearing or practicing before the Commission as an attorney.	The underlying violation was not a securities violation, and Mr. Caplan's law license had been suspended already.
3/5/20	Lit. Rel. 24601	SEC v. ICOBox and Nikolay Evdokimov	Nikolay Evdokimov	Injunction, Disgorgement, Interest, Penalty	I had concerns about our theory of the case and jurisdiction.
3/9/20	34-88344	Dennis M. Farrah	Dennis M. Farrah	Penny stock bar	The underlying violation was not related to penny stocks, and there was no carve-out for personal trading.
3/27/20	Lit. Rel. 24527	SEC v. Bettor Investments, LLC and Matthew C. Stuart	Matthew C. Stuart	Penalty	I did not support one of the charges, and Mr. Stuart's apparently dire personal and financial circumstances made it unlikely he would be able to pay the penalty.
3/30/20	Lit. Rel. 24783	Tricent Capital	Adam Matthew Root	O&D Bar	The alleged misconduct, which took place at an investment adviser, was an inadequate

					basis for an officer and director bar.
4/22/20	34-88723	Kenneth D. Shifrin	Kenneth D. Shifrin	Penalty	The evidence did not support that Mr. Shifrin was a cause of the company's alleged violations.
4/22/20	34-88724	Brian M. Storms	Brian M. Storms	Penalty	The evidence did not support that Mr. Storms was a cause of the company's alleged violations.
4/30/20	34-88784	Dockside Asset Management	Jerry E. Orellana	Penny stock bar	The underlying violation was not related to penny stocks, and there was no carve-out for personal trading.
4/30/20	IA-5490	Monsoon Capital LLC	Gautam Prakash	Industry bars	I did not believe that barring Mr. Prakash would be in the best interest of his clients.
5/26/20	34-88941	William Andrew Hightower	William Andrew Hightower	Penny Stock Bar	The underlying violation was not related to penny stocks, and there was no carve-out for personal trading.
6/24/20	34-89144	MDB Group	Michael Douglas Billings	Penny Stock Bar	The underlying violation was not related to penny stocks, and there was no carve-out for

					personal trading.
6/25/20	34-89159	Dain F. Stokes	Dain F. Stokes	Penny Stock Bar	The underlying violation was not related to penny stocks, and there was no carve-out for personal trading.
6/29/20	34-89178	DanDan Wu	DanDan Wu	Disgorgement and Prejudgment Interest	In light of the Supreme Court's <i>Liu</i> decision, the SEC may not have authority to obtain disgorgement in cases where the SEC is unable to return money to investors.
6/30/20	33-10795	Potamus Trading	Eric J. Pritchett	Penny Stock Bar	The underlying violation was not related to penny stocks, and there was no carve-out for personal trading.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR MENENDEZ FROM CAROLINE CRENSHAW**

Q.1. In its postmortem of the financial crisis, the Financial Crisis Inquiry Commission concluded that “compensation structures were skewed all along the mortgage securitization chain, from people who originated mortgages to people on Wall Street who packaged them into securities.”

What is your view on the impact of incentive-based compensation structures in the years leading up to the financial crisis?

A.1. There is little doubt that banker-pay practices encouraged excessive risk taking that contributed to the financial crisis. Bonuses allowed bankers to capture the upsides of excessive risk-taking but shielded them from the downside, incentivizing executives to take on more risk than was optimal for the companies or the economy. In particular, research has shown that bankers sold billions of dollars in stock awards during good times, leaving ordinary investors and taxpayers holding the bag when their firms collapsed. See Lucian A. Bebchuk, Alma Cohen, and Holger Spamann, “The Wages of Failure: Executive Compensation at Bear Stearns and Lehman 2000–2008,” *Yale J. on Reg.*, at 257 (2010).

Q.2. If confirmed as Commissioner, would you push the SEC to finish the incentive-based compensation rule required by Dodd–Frank?

A.2. Yes. As I indicated during the hearing, one of my priorities would be to complete the Dodd–Frank executive compensation rules, and rules reining in banker-bonus practices that put our financial system at risk should be a high priority. If confirmed, I would make every effort to move this rule forward.

Q.3. If so, what you think this rule should look like?

A.3. I want to be careful to avoid prejudging any matters that might come before me if confirmed. With that in mind, I think rules related to banker bonuses should address at least three issues.

First, these rules should prohibit bonus structures that encourage excessive risk-taking, and in particular should address payment of significant cash bonuses on the basis of short-term performance measures for activities related to long-term risk taking. One way to address this would be to require deferral periods during which bankers cannot cash out their bonuses until the long-run consequences of their decisions can be better understood by the banks and their regulators.

Second, the rule should require firms to claw back bonuses that executives did not earn in light of long-run performance measures. Regulators and firms must be able to assess bankers’ performance over the long run—and require the return of any compensation executives did not truly earn—if we are to avoid excessive short-term risk taking.

Third, these rules should address pay practices not just for top executives, but for any bankers whose activities could put America’s financial stability at risk. The crisis showed that even non-executives at our largest financial institutions can take risks with disastrous consequences for ordinary Americans. Any rules in this

area should prohibit those bankers, too, from being paid for short-run performance while leaving taxpayers holding the bag for the long-run consequences of those choices. If confirmed, I will urge the Commission and other regulators to ensure that these rules are adopted—and change the banker pay practices that put our financial stability at risk.

Q.4. Since the start of the COVID pandemic, there has been a sharp increase in scams linked to the coronavirus pandemic. The number of claims relating to treatments, therapies and equipment that promise big investor returns, has already led the SEC to temporarily halt trading in the shares of more than 30 companies in an effort to protect investors.

In addition to stopping trading in shares of more than 30 companies and establishing a coronavirus steering committee, what other steps do you believe the SEC needs to take to protect investors from scams?

A.4. While I have been impressed with the Commission's response to the issues COVID presents to the health and integrity of the markets, there is more to do.

First, the Commission should aggressively educate retail investors, particularly on solicitations for fraudulent investment products offered through social media platforms.

Second, the Commission should devote significant effort and resources to penalizing those who prey on individuals during a pandemic when people are particularly vulnerable. And, as necessary, the Commission should work with Congress to assess whether the penalties for these frauds are calibrated optimally to deter them.

Third, the Commission must work hand in glove with law enforcement to ensure that any criminal conduct is fully prosecuted. As always, the staff within the Division of Enforcement have been doing excellent work under the current conditions, and, if confirmed, I would look forward to supporting their work.

Q.5. Are Main Street investors, investors whose savings are their investment capital, more vulnerable to COVID related scams? If so, what measures does the SEC specifically need to take to protect the Main Street investor?

A.5. Every investor—from the most sophisticated institutional investor to the young family building its nest egg—is entitled to the protections provided by the Commission. However, certain groups are more vulnerable than others. For example, members of the military and the elderly are often the targets of Ponzi schemes and other frauds that have become endemic during this crisis.

It is imperative the Commission devote resources to protecting those who are most vulnerable. To prevent fraud, the Commission should prioritize investor education and advocacy—give investors the tools to stop the fraud before it starts. To deter fraud, the Commission should quickly and decisively penalize perpetrators. Also, as noted above, the Commission should work with Congress to assess whether the penalties for these frauds are calibrated optimally. Finally, it is critical that the Commission partner with FINRA, other Federal agencies, and State regulators to ensure comprehensive oversight and enforcement.

Q.6. As national protests continue in the wake of the deaths of George Floyd and Breonna Taylor, Americans continue to demand justice and reforms to address systemic racism in all facets of our country, including in Corporate America. I was originally hopeful that the SEC would help address the corporate diversity problem through its 2009 diversity disclosure rule. Unfortunately, the 2009 rule failed to even define “diversity” and it gives companies far too much discretion on what they report.

Ms. Crenshaw, can investors have a full understanding of corporate diversity if only 3.2 percent of Fortune 500 companies release complete data on race and gender of their employees?

A.6. No. Existing disclosures are insufficient to give investors an accurate picture of board and workforce diversity. If confirmed, I would urge the Commission to consider the following policy initiatives.

First, the Commission should revise the 2009 diversity disclosure rule. See Securities and Exchange Commission, Proxy Disclosure Enhancements (Feb. 28, 2009). The reason it should do this is simple: the evidence suggests that companies are not providing investors with the information they need. See, e.g., Anne Simpson, California Public Employees Retirement System et al., “Petition for Amendment of Proxy Rule Regarding Board Nominee Disclosure-Chart/Matrix Approach”, (Mar. 31, 2015).

Though Commission staff have taken steps to encourage companies to provide details on diversity when making board composition decisions, this is not enough. See Securities and Exchange Commission, Regulation S-K Compliance & Disclosure Interpretations 116.11 and 133.13 (updated Feb. 6, 2019). Moving forward, the Commission should undertake a comprehensive review that can and should engage corporate constituents and investors from a variety of backgrounds to define “diversity” and include the definition in a more effective diversity disclosure rule.

Second, the Commission should work with fellow regulators to reconsider the Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of the Entities Regulated by the Agencies. See Securities and Exchange Commission, et al., Final Interagency Policy Statement Establishing Joint Standards for Assessing the Diversity Policies and Practices of the Entities Regulated by the Agencies (Jun. 10, 2015). This Policy Statement set forth standards that an entity could voluntarily use to assess diversity policies and practices. The Commission should work to ensure that, across the board, companies and registered entities are disclosing the information necessary for investors and customers to make informed decisions about diversity practices.

Third, without prejudging a rule that may come before me if I am confirmed, I generally support the disclosure of workforce diversity data, including data on race and gender, in human capital disclosures. As comment letters have indicated, such disclosures need not be financially burdensome and can provide investors with information that enhances insights into the long-term financial performance of a company. See, e.g., Human Capital Management Coalition, Comment Letter on Proposed Rule Modernization of Regulation S-K Items 101, 103, and 105 (Aug. 8, 2019).

Q.7. Does enhanced transparency lead to greater diversity among corporate board members and senior management?

A.7. It is critical to give investors the information they need in order to make a fully informed decision and appropriately allocate their capital. Investors have made clear that data on board and management diversity is important to their decisions. Armed with accessible, comparable, and straightforward disclosures, investors can choose to stay put, advocate change, or exit a company and allocate their capital elsewhere. While enhanced transparency is certainly necessary to increase diversity among corporate board members and senior management, it is not sufficient.

The Commission should therefore be thinking about other avenues to encourage diversity. One example is to increase the budget and staff of the Commission's Office of Minority and Women Inclusion and Office of Investor Education and Advocacy so the excellent staff in those offices can effectively educate investors and students of all ages to increase financial literacy, promote a diverse talent pipeline, and solicit public comment on diversity and inclusion best practices. The Commission should also think through ways it can encourage companies to identify and change entrenched organizational structures and work practices that, even if inadvertently, operate to discourage diversity.

It is crucial for both the Commission and companies to recognize and promote the benefits of having diverse and inclusive boards, management, and workforces. The Commission should lead by example and, if confirmed, I will invest my time and resources to ensure the agency is setting the appropriate tone.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM CAROLINE CRENSHAW

Q.1. *Private Equity*—Last year, I introduced S. 2155, the Stop Wall Street Looting Act of 2019, to reform the private equity industry and end abusive leveraged buyouts.¹

Private equity transactions are fueled by risky loans that are immediately securitized and sold.² A provision in my bill would help protect the economy from risks stemming from excessive debt imposed on private equity firms' target companies. It would require arrangers of corporate loan securitizations to retain risk by clarifying that managers of collateralized debt obligations are subject to risk retention requirements established in the Dodd–Frank Wall Street Reform and Consumer Protection Act.³

Do you believe that arrangers of corporate loan securitizations should retain risk to prevent dangerous loans that are immediately passed onto unknowing investors?

¹ Office of Senator Warren, "Warren, Baldwin, Brown, Pocan, Jayapal, Colleagues Unveil Bold Legislation to Fundamentally Reform the Private Equity Industry", July 18, 2019, <https://www.warren.senate.gov/newsroom/press-releases/warren-baldwin-brown-pocan-jayapal-colleagues-unveil-bold-legislation-to-fundamentally-reform-the-private-equity-industry>.

² *Washington Post*, "The Shadow Banks Are Back With Another Big Bad Credit Bubble", Steven Pearlstein, May 31, 2019, https://www.washingtonpost.com/business/economy/the-shadow-banks-are-back-with-another-big-bad-credit-bubble/2019/05/31/a05184de-817a-11e9-95a9-e2c830afe24f_story.html.

³ Securities and Exchange Commission, "Asset-Backed Securities", October 23, 2014, <https://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtml>.

A.1. Yes. It is critical that the Commission consider measures that would better align the incentives of the loan arrangers with those of investors. Ensuring that arrangers of corporate loan securitizations retain risk would be an important step toward aligning those incentives.

Traditional standards that have long provided investors protections in this market have deteriorated. Specifically, lending standards, underwriting diligence, and contractual covenants—key protective measures related to debt instruments—have been diminished. Meanwhile, in the current low-interest rate environment, investors seek yield with less focus on lending standards.

As a result, the arrangers of corporate loan securitizations may be incentivized to shift riskier debt instruments to other investors, who are often less sophisticated and have fewer avenues for recourse. This could increase market instability and leave retail investors holding the bag.

Q.2. *Leveraged Lending*—In November 2018, I sent a letter to SEC Chairman Clayton, Treasury Secretary Steven Mnuchin, Federal Reserve Chairman Jerome Powell, then-Comptroller of the Currency Joseph Otting, and Federal Deposit Insurance Corporation Chairman Jelena McWilliams expressing concern about the rapid growth of leveraged corporate lending, or lending to companies that are already highly indebted.⁴

In a section addressed to Chairman Clayton, I stated that the Volcker Rule is intended to restrict bank involvement with external funds and that trade associations have asked the SEC to significantly loosen Volcker Rule controls. The SEC completed its rollbacks of the Volcker Rule in September 2019.⁵ In response to the rollback of the Volcker Rule, SEC Commissioner Robert J. Jackson, Jr., stated, “as I said at the proposal stage, [r]olling back the Volcker Rule while failing to address pay practices that allow bankers to profit from proprietary trading puts American investors, taxpayers, and markets at risk.”⁶

Chairman Clayton’s January response provided a procedural, but not a substantive, explanation of the status of SEC’s proposed amendments to the Volcker Rule.⁷ How do you view the SEC’s rationale for removing protections against excessive risks under the Volcker Rule?

A.2. The Commission needs to do all that it can to safeguard the financial system. Like Commissioner Jackson, I am unconvinced that eliminating key investor protections was appropriately justified by the analysis in the September 2019 revisions to the Volcker rule. The release based its changes on the supposed decline of “li-

⁴Letter from Senator Warren to Treasury Secretary Steven Mnuchin, Federal Reserve Chairman Jerome Powell, Comptroller of the Currency Joseph Otting, Securities and Exchange Commission Chairman Jay Clayton, and Federal Deposit Insurance Corporation Chairman Jelena McWilliams, November 14, 2018, <https://www.warren.senate.gov/imo/media/doc/2018.11.14%20Letter%20to%20Regulator><https://www.sec.gov/spotlight/dodd-frank/assetbackedsecurities.shtml%20on%20Leveraged%20Lending.pdf>.

⁵U.S. Securities and Exchange Commission, “Statement on Volcker Rule Amendments”, Public Statement by Commissioner Robert J. Jackson, Jr., September 19, 2019, <https://www.sec.gov/news/public-statement/statement-jackson-091919>.

⁶U.S. Securities and Exchange Commission, “Statement on Volcker Rule Amendments”, Public Statement by Commissioner Robert J. Jackson, Jr., September 19, 2019, <https://www.sec.gov/news/public-statement/statement-jackson-091919>.

⁷Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, January 31, 2019.

quidity and capital formation.” Yet, the Commission’s Division of Economic and Risk Analysis did not find that the Volcker rule reduced the liquidity of the primary or secondary markets. See Sec. & Exch. Comm’n, Div. of Econ. & Risk Analysis, “Report to Congress on Access to Capital and Market Liquidity” (2017). Accordingly, I too worry that we are putting American investors, taxpayers, and markets at risk.

Q.3. *Inflated Bond Ratings*—In September, I wrote Chairman Clayton a letter regarding troubling reports of inflated bond ratings and the perverse incentives within the bond rating industry and urged the SEC to take immediate action to protect the economy from risky lending propped up by conflicts of interest between bond issuers and rating agencies.

My letter described the flows in the incentive structures of bond ratings firms’ through the “issuer-pays” model used by major firms like S&P and Moody’s. Under the issuer-pays model, bond issuers pay the agencies for their assessments of the products they hope to sell, ultimately giving the rating firms an incentive to give better ratings, regardless of the risk, since bond issuers might otherwise go to their competitors.⁸ In his November response, Chairman Clayton stated that he shared my concerns about conflicts of interest in rating agency compensation models and said that he is awaiting recommendations or advice from various advisory committees.⁹

To your knowledge, has the SEC instructed the advisory committees that the SEC is consulting for recommendations or advice on the role and activities of bond rating agencies to produce any work products by a certain date or timeline?

A.3. I do not know whether the Commission has instructed the advisory committees to provide recommendations or advice on the role and activities of bond rating agencies within any certain date or timeline. However, if confirmed, I would strongly support encouraging those committees to turn their attention to this important issue.

Q.4. If so, please explain the SEC’s instructions and any requested deadlines. Additionally, please explain if these recommendations or advice will be made public.

A.4. I do not know whether any instructions were given to the advisory committees regarding a specific timeline. However, I do know that formal recommendations, once they have been approved by the committee, are made public on the Commission’s website. The Fixed Income Market Structure Advisory Committee released a recommendation on June 1, 2020, on ways to mitigate conflicts of interest in credit ratings. See, Sec. & Exch. Comm’n, “Fixed Income Market Structure Advisory Comm., Recommendation Regarding Ways To Mitigate Conflicts of Interest in Credit Ratings” (2020).

⁸ Council on Foreign Relations, “The Credit Rating Controversy”, CFR Staff, February 19, 2015, <https://www.cfr.org/background/credit-rating-controversy>.

⁹ Letter from Securities and Exchange Commission Chairman Jay Clayton to Senator Warren, November 21, 2019.

Q.5. If not, if you are confirmed, how will you work to ensure that the SEC instructs these advisory committees to complete their work products by a certain deadline and how will you ensure that these recommendations or advice are made public?

A.5. It is important for the Commission's advisory committees to work in a timely and transparent way. If confirmed, I would work with staff and fellow Commissioners to make sure they do just that.

Q.6. Chairman Clayton's response also referenced some work that the SEC has done to respond to the conflicts of interest in the issuer-pays model.¹⁰ An August *Wall Street Journal* report, however, stated that "Inflated bond ratings were one cause of the financial crisis. A decade later, there is evidence they persist. In the hottest parts of the booming bond market, S&P and its competitors are giving increasingly optimistic ratings as they fight for market share."¹¹

In your view, why has the SEC's efforts to respond to the conflicts of interest have failed to prevent bond rating agencies from artificially inflating bond ratings?

A.6. The issuer-pays model continues to create perverse incentives to inflate ratings. Current Commission protections, such as the segregation of marketing and sales personnel from the credit rating determination process, are not effectively addressing this inherent conflict of interest. If confirmed, I would support a fundamental rethinking of the issuer-pay model.

Q.7. *Climate Risk Disclosure*—In July, Representative Sean Casten (D-IL-06) and I introduced H.R. 3623/S. 2017, the Climate Risk Disclosure Act of 2019.¹² Our bill would address the fact that investors currently lack access to basic information about the potential impact of the climate crisis on American companies, which creates significant environmental and financial risks. The Climate Risk Disclosure Act of 2019 would require public companies to include uniform information about their exposure to climate-related risks, which will help investors appropriately assess those risks, among other benefits, in their disclosures to the SEC.

The most recent volume of the National Climate Assessment, a scientific report issued by 13 Federal agencies in November 2018, stated that climate change may cause losses of up to 10 percent of the U.S. economy by 2100.¹³ Additionally, a 2015 report from *The Economist Intelligence Unit* wrote that, of the world's current stock

¹⁰Id.

¹¹*Wall Street Journal*, "Inflated Bond Ratings Helped Spur the Financial Crisis. They're Back," Cezary Podkul and Gunjan Banerji, August 7, 2019, <https://www.wsj.com/articles/inflated-bond-ratings-helped-spur-the-financial-crisis-theyre-back-11565194951>.

¹²Office of Senator Warren, "Senator Warren, Representative Casten Lead Colleagues Introducing a Bill To Require Every Public Company To Disclose Climate-Related Risks", press release, July 10, 2019, <https://www.warren.senate.gov/newsroom/press-releases/senator-warren-representative-casten-lead-colleagues-introducing-a-bill-to-require-every-public-company-to-disclose-climate-related-risks>.

¹³*New York Times*, "U.S. Climate Report Warns of Damaged Environment and Shrinking Economy", Coral Davenport and Kendra Pierre-Louis, November, 23, 2018, <https://www.nytimes.com/2018/11/23/climate/us-climate-report.html>.

of manageable assets, the expected losses due to climate change are valued at \$4.2 trillion by the end of the century.¹⁴

Do you believe that understanding which assets of public companies may be materially affected by climate change may help investors make more informed decisions about the risk of their investments?

A.7. Yes. Climate change will impact every part of the American economy, and it is critical that we understand how public companies will be affected by these changes. A wealth of evidence suggests that climate-related factors are financially material. See, e.g., Vanguard, Investment Stewardship Annual Report (2017) (“[O]ur position on climate risk is anchored in long-term economic value—not ideology.”); California State Teachers’ Retirement System, Comment Letter on Concept Release Business and Financial Disclosure Required by Regulation S-K (July 21, 2016) (citing data that “strongly supports the need for internal investment staff and our external managers to consider ESG risks of a portfolio company in its evaluation and allocation of capital”).

The Commission can and should do more in this area, particularly on measuring companies’ sustainability profiles. If confirmed, I would urge the Commission to ensure that investors have the highest-quality information about how America’s public companies may be affected by climate change risks.

Q.8. Do you believe it would be useful for investors to understand public companies’ contributions to greenhouse gas emissions and their exposure in the event of a Government- or market-mandated transition towards a lower-carbon economy?

A.8. Yes. In recent years we have witnessed investors of all stripes demanding climate-risk disclosures—including companies’ contributions and exposures to climate change risks. For example, over the past several years shareholders representing trillions of dollars have submitted requests to the Commission for enhanced disclosure of climate-related risks. See Jill E. Fisch et al., “Comments on Request for Rulemaking on Environmental, Social, and Governance (ESG) Disclosure”, (Oct. 1, 2018) (“In recent years, there have been a number of significant petitions and other investor proposals seeking expanded disclosure of ESG information.”).

This proxy season, climate risk was, again, the most common shareholder proposal and received historic levels of support. It is an essential part of the Commission’s mission to make sure that its rules evolve so that investors have the information they need in order to evaluate the companies that they own. If confirmed, I would urge the Commission to ensure that the Commission’s disclosure rules in this area keep pace with investors’ needs.

Q.9. If so, if you are confirmed, how will you work to ensure that the SEC ensures that investors have the information they need to consider climate-related risks?

A.9. The Commission last visited disclosure in this area a decade ago. See Securities and Exchange Commission, “Guidance Regarding Disclosure Related to Climate Change” (Feb. 8, 2010). The risks

¹⁴ *The Economist Intelligence Unit*, “The Cost of Inaction”, 2015, p. 41, https://eiuperspectives.economist.com/sites/default/files/The%20cost%20of%20inaction_0.pdf.

from climate change to our markets have only intensified since then—and will continue to do so. Yet, the Commission’s rules have not kept up with these changes.

If confirmed, I would urge the Commission first and foremost to update our guidance in this area. Second, I would work to ensure that investors have high-quality information on how money managers vote their shares on proposals relating to climate risks. Finally, I would want to make sure that our rules help investors get what they bargain for when they select a fund with a sustainability strategy and that those funds are appropriately classified and their strategies clearly disclosed. If confirmed, I look forward to working with my fellow Commissioners and the staff to ensure that Commission’s rules across the board—and especially when it comes to the environmental crisis we are facing—keep pace with investors’ needs.

Q.10. A Government Accountability Office (GAO) report from February 2018 states, “[Securities and Exchange Commission (SEC)] reviewers may not have access to the detailed information that companies use to arrive at their determination of whether risks, including climate-related risks, must be disclosed in their SEC filings.”¹⁵ While the SEC has issued guidance for considering effects of climate change, the SEC has not mandated disclosures for how climate risk materially affects returns.

If Federal regulators do not have the information needed to fully understand public companies’ climate-related risks under current law, do investors have the adequate information needed to make informed decisions about companies’ risks?

A.10. No. As you noted, the Commission has long required the disclosure of material environmental risks and in 2010, set forth guidance regarding climate change. See Securities and Exchange Commission, “Guidance Regarding Disclosure Related to Climate Change” (Feb. 8, 2010). The result has been disclosures that are inconsistent, unduly complex, and lacking in comparability and quantification—undermining investors’ ability to evaluate climate-related risks. Accordingly, I share your concern that existing rules and guidance on this issue have proved inadequate. This is the type of information asymmetry that our securities regulatory regime was designed to remedy. If confirmed, I would urge the Commission to ensure that its disclosure rules are giving investors sufficient information to evaluate companies’ climate-related risks.

Q.11. *Regulation Best Interest (Reg BI)*—In June 2019, SEC approved Reg BI, which despite Congress’s instruction in sections 913(f) and 913(g) of the Dodd–Frank Wall Street Reform and Consumer Protection Act establishes neither a uniform standard for broker-dealers and investment advisers, nor a fiduciary standard for broker-dealers.¹⁶ Then-Commissioner Robert J. Jackson, Jr., described the rule as “a muddled standard that exposes millions of

¹⁵ Government Accountability Office, “Climate-related Risks”, February 2018, pp. 17–18, <https://www.gao.gov/assets/700/690197.pdf>.

¹⁶ U.S. Securities and Exchange Commission, “SEC Adopts Rules and Interpretations To Enhance Protections and Preserve Choice for Retail Investors in Their Relationships With Financial Professionals”, press release, June 5, 2019, <https://www.sec.gov/news/press-release/2019-89>.

Americans to the costs of conflicted advice.”¹⁷ Reg BI includes no obligation to eliminate conflicts of interest. The SEC clearly stated, “we are not requiring broker-dealers to develop policies and procedures to disclose and mitigate all conflicts of interest.”¹⁸ Instead, Reg BI imposes a limited requirement to disclose conflicts.

In response to Senator Brown’s question regarding Reg BI enforcement, you stated, “I think it is critical that the SEC work [to] drive successful compliance of this rule. That means. working with firms to make sure that their policies and procedures are appropriate to mitigate conflicts of interest, and to the degree they’re not, we have to be willing to hold those firms accountable when they are not appropriately mitigating conflicts of interest.”¹⁹ You also stated, “we need to make sure over time that rules are actually changing the status quo for investors.”²⁰

Reg BI states if “a broker-dealer cannot fully and fairly disclose a conflict of interest,” a broker-dealer “should eliminate the conflict or adequately mitigate the conflict,” but it does not define what adequate mitigation looks like.²¹

If confirmed, how will you define adequate mitigation?

A.11. Those advising American families how to prepare for their financial futures should not get paid to give bad advice. Thus, at a minimum, adequate mitigation must ensure that financial professionals’ incentives are aligned with those of the investors they purport to serve. As currently drafted, Regulation Best Interest does not provide sufficient clarity in this regard. If confirmed, I would work with my fellow Commissioners and staff to ensure that the mitigation requirement has real teeth.

Q.12. The SEC rule left “best interest,” the key term that describes the standard of conduct for broker-dealers, undefined.²²

Do you believe the standard should have defined “best interest,” as several commenters on the rule discussed?²³

A.12. Yes. It is critical, for both industry and investors, that the Commission provide clear and firm rules. It is unclear how Regulation Best Interest provides protections beyond the status quo because it failed to define “best interest” and does not provide sufficient guidance on what activities are prohibited under the standard.

Q.13. In your view, what if any distinction exists between the “best interest” standard of conduct set forth in the SEC rule and the

¹⁷ U.S. Securities and Exchange Commission, “Statement on Final Rules Governing Investment Advice”, Public Statement by Commissioner Robert J. Jackson, Jr., June 5, 2018, <https://www.sec.gov/news/public-statement/statement-jackson-060519-iabd>.

¹⁸ U.S. Securities and Exchange Commission, *Federal Register* Final Rule, “Regulation Best Interest: The Broker-Dealer Standard of Conduct”, July 12, 2019, pp. 33388, <https://www.govinfo.gov/content/pkg/FR-2019-07-12/pdf/2019-12164.pdf>.

¹⁹ Senate Committee on Banking, Housing, and Urban Affairs, “Nomination Hearing”, July 21, 2020, <https://www.banking.senate.gov/hearings/07/10/2020/nomination-hearing>.

²⁰ *Id.*

²¹ U.S. Securities and Exchange Commission, *Federal Register* Notice, “Regulation Best Interest: The Broker-Dealer Standard of Conduct”, July 12, 2019, <https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct>.

²² U.S. Securities and Exchange Commission, *Federal Register* Notice, “Regulation Best Interest: The Broker-Dealer Standard of Conduct”, July 12, 2019, <https://www.federalregister.gov/documents/2019/07/12/2019-12164/regulation-best-interest-the-broker-dealer-standard-of-conduct>.

²³ *Id.*

“suitability” standard established by the Financial Industry Regulatory Authority that predated it?²⁴

A.13. I am concerned that there are not meaningful differences between the two frameworks. I am particularly troubled that there are elements of Regulation Best Interest that mirror FINRA suitability rules, guidance, and precedent. Given this lack of clarity, it is important for the Commission, through both compliance and enforcement, to ensure that investors receive the protections they have been promised.

Q.14. In response to the SEC’s proposal for Reg BI, a bipartisan group of 11 former SEC senior economists wrote in a comment, “[w]e find it worrisome that the proposals’ economic analysis does not fully consider some potentially important dimensions of the retail client–adviser relationship.”²⁵

Do you believe the cost-benefit analysis that supports Reg BI was sufficient?

A.14. No. The cost-benefit analysis supporting Regulation Best Interest was insufficient. Unfortunately, a deficient economic analysis produced a deficient rule. However, given that Regulation Best Interest is current law, it is critical that we implement it in a robust manner and continuously review whether it is fulfilling its stated goals. Ongoing oversight will be crucial to ensuring that the rule meaningfully enhances protections for investors. Such oversight includes regular assessments of Regulation Best Interest’s impact, as well as working with the Commission’s Office of the Investor Advocate to test the effectiveness of Form CRS. To the extent Regulation Best Interest and Form CRS do not enable informed decision making, the Commission will need to reconsider its regulatory approach.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM CAROLINE CRENSHAW

Q.1. What are the personal and professional costs to whistleblowers that concern you? How can the SEC mitigate those concerns?

A.1. Whistleblowers who come forward to reveal wrongdoing face many professional and personal costs, including retaliation, loss of employability, and loss of income. The final outcome of an investigation initiated by a whistleblower complaint often takes years, which can lead to a long period of doubt and emotional distress. Each one of these costs discourages whistleblowers from speaking up, and risks harming investors while illegal conduct continues.

The Commission should do at least three things to minimize these costs. First, it needs to investigate whistleblower cases as expeditiously as possible. Second, the Dodd–Frank Act grants the Commission authority to hold accountable companies that engage in retaliation against internal whistleblowers—and we should use

²⁴ Financial Industry Regulatory Authority, “Suitability”, Accessed July 23, 2020, <https://www.finra.org/rules-guidance/key-topics/suitability>.

²⁵ Carnegie Mellon University, “Professor Chester Spatt Criticizes Proposed SEC Regulation”, press release, February 25, 2019, <https://www.cmu.edu/tepper/news/stories/2019/february/chester-spat-sec-regulation.html>.

it, acting quickly and decisively to hold responsible anyone who impedes a whistleblower through retaliation or other means. Finally, the process for determining whistleblower awards must be as transparent and predictable as possible—so that those putting their careers at risk know that they will be rewarded for taking the difficult step of coming forward.

Q.2. How will including deferred prosecution agreements and non-prosecution agreements as “actions” ensure whistleblowers are not penalized as a result of the Government’s decision to pursue a particular litigation strategy?

A.2. Without commenting on a matter that may come before me if I am confirmed, as a general policy matter, the Commission should do what it can to encourage whistleblowers to come forward. To the degree deferred prosecution agreements and nonprosecution agreements lead to a whistleblower receiving a lesser award, or no award, the Commission should do all it can to assure whistleblowers that they will be appropriately compensated under the law.

Q.3. Should the SEC ensure that legitimate and honest reports do not lead to retaliation for a whistleblower?

A.3. Yes. As mentioned above, pursuant to authority granted by the Dodd–Frank Act, the Commission can take action against employers for retaliating against whistleblowers. Additionally, Commission Rule 21F-17(a) prohibits taking action to prevent an individual from contacting the Commission to report a possible securities violation. The Commission has brought a number of actions based on both retaliatory conduct as well as behavior meant to impede reporting. See *SEC v. Collector’s Coffee, Inc. (d/b/a Collectors Cafe)*, and *Mykalai Kontilai*, 19-cv-04355 (November 4, 2019). The Commission should continue to vigorously pursue such cases in order to assure whistleblowers that there are meaningful protections in place for those who speak up against violations of the law.

Q.4. Will you ensure that whistleblower awards are paid out at the highest amount possible so that it matches or exceeds the overall costs to whistleblowing?

A.4. Without commenting on a matter that may come before me if I am confirmed, I can say that it is critical to the integrity of the program that whistleblowers who put their livelihoods at risk to help the Commission enforce the law are fully compensated for doing that crucial work.

Q.5. What should the SEC do to increase shareholder voting and participation? How is the SEC ensuring votes are accurately tabulated?

A.5. Shareholder voting is a critical mechanism for holding corporate insiders accountable for the decisions they make with American investors’ money. To facilitate shareholder democracy, the Commission should promptly review at least three areas of its current rules.

First, the Commission has recently taken several regulatory steps that may impede shareholders’ ability to vote. Without judging any particular matter that may come before me, if confirmed, I would urge my colleagues to consider the effects of these steps on shareholders’ voting rights.

Second, the Commission should immediately turn its attention to the broken system for counting shareholder votes, sometimes referred to as proxy plumbing. There has been broad agreement throughout the market for years that the Commission should enhance the transparency, efficiency, cost-effectiveness, and, most importantly, accuracy of that process, including by ensuring that all votes are counted through end-to-end vote confirmation.

Third, and again without judging any matter that may come before me if I am confirmed, the Commission should consider moving forward with a universal proxy rule that would make it easier for investors to vote for their preferred director nominees.

If confirmed, I will urge the Commission to move these initiatives forward.

Q.6. How will you ensure that entities you oversee consider the impact of increasingly severe storms, floods, and fires on their firms? How will you ensure corporations are adequately planning and accounting for widespread and potentially costly damage to property serving as collateral for loans or to assets underpinning other investments?

A.6. Increasingly frequent and severe weather events resulting from climate change will impose major costs on our markets. If confirmed, I would urge the Commission to take the following actions to help address these concerns.

First, the Commission should require comprehensive issuer disclosure of climate-related risks to ensure, among other things, that investors have transparency into companies' business continuity planning in light of these risks.

Second, the Commission should work with the Public Company Accounting Oversight Board (PCAOB) to make sure audit firms are appropriately integrating assessment of climate risks in public company audits and working to ensure those companies develop meaningful, comparable measures for disclosing those risks.

Finally, I would urge my colleagues in the Office of Compliance Inspections and Examinations to regularly examine the business continuity plans of registrants to ensure they are taking into account the risks from climate change and severe weather events.

Q.7. Do you think corporate disclosure of climate change risks is adequate to inform investors of the economic and corporate resilience to climate change?

A.7. No. It has been over a decade since the Commission released its "Guidance Regarding Disclosure Related to Climate Change". See, Securities and Exchange Commission, "Guidance Regarding Disclosure Related to Climate Change" (Feb. 8, 2010). During the last decade, investor interest in this subject has reached record levels, with major market participants and ordinary investors alike calling for companies to disclose the effects of their activities on the environment. See Bruce Goldfarb, "Companies Need To Engage on ESG Issues Now or Risk a Bruising 2021", *Forbes*, July 17, 2020. Yet, the Commission has done little to ensure that such disclosure is clear, comparable, and accessible for investors. And some recent Commission proposals risk taking environmental issues off the corporate ballot—at a time when investors are clamoring for more transparency on this subject, not less.

If confirmed, I would urge the Commission to do more on this subject, starting with immediately convening a taskforce to study and report to the Commission on climate risk impacts on the securities markets. I would also urge the Commission to work with the PCAOB to ensure audit firms are appropriately integrating assessment of climate risk.

Corporate disclosure of climate risk is one critical step forward and the Commission needs to ensure that investors have the information they need to make informed investment decisions.

Q.8. What are the environmental transition risks for corporations? What costs can they be expected to incur as the world works to reduce its carbon footprint to mitigate global warming?

A.8. Companies and financial institutions face a number of major physical and transition-related risks associated with climate change. Weather-induced impairment of real property and assets can spill over to create instabilities in financial markets and the economy more broadly. Rapid changes in Government or market-mandated policies, consumer sentiment, or technological changes, for example, could cause unplanned losses to high-carbon industry sectors. The longer markets and Governments wait to address these risks, the worse they will get. That is why, if confirmed, I will urge the Commission to do all it can to mitigate climate-related impacts on our markets.

Q.9. How can the SEC promote a long-term focus among publicly traded companies?

A.9. The Commission should do all it can to ensure that American companies and their leadership pursue long-term value creation rather than short-term stock-price increases. There are at least three steps the Commission should consider that would encourage corporate executives to pursue sustainable, long-term growth.

First, the Commission should examine executives' incentives to pursue stock buybacks. The Commission has not revisited its rules related to stock buybacks in two decades, and there is now significant evidence that executives use buybacks to boost their bonuses rather than build long-term value. It is time for the Commission to revisit these rules to ensure that corporate management is more focused on building jobs and communities rather than engaging in short-term trading in their company's own shares. See Robert J. Jackson, Jr., Letter on Stock Buybacks and Insiders' Cashouts, Harvard Law School Forum on Corporate Governance, Mar. 8, 2019.

Second, decades of paying corporate executives in stock has given management incentives to boost short-term stock prices rather than long-run value. The Dodd-Frank Act included an important provision that gives the Commission authority to require detailed disclosure on the relationship between executive pay and performance. Yet those rules have still not been finalized, and too many companies continue to use short-run stock prices as the sole arbiter of performance. The Commission should make sure that investors get the information they need to evaluate whether, and how, executive pay packages prioritize short-run stock prices over long-term value creation.

Third, the Commission should evaluate the potential role of activist investors in pressuring companies to maximize short-term stock prices at the expense of American workers and communities. These investors play a critical role in holding corporate management accountable, but the evidence shows that some activists favor strategies that can harm workers. The Commission's rules in this area have not been examined for decades despite significant changes in the law and marketplace. Studying those changes, and updating the rules to make sure that activists are pursuing sustainable, long-run strategies rather than profiting at the expense of workers and communities, should be among the Commission's priorities.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN
FROM KYLE HAUPTMAN**

Q.1. The NCUA Board is an independent agency that must ensure the safety and soundness of the credit union system without regard to politics. You've served in a number of political and campaign positions, including on the Trump transition team. What is your relationship with the White House? Are you able to serve in this position objectively, without being influenced by the Executive branch? Will you commit to refuse to take any action based on requests from the White House?

A.1. If confirmed, I would seek to maintain the highest level of ethical standards. Because this Board seat's term ends in 2025, I will serve alongside at least one additional presidential Administration. I pledge to ensure the NCUA's independence regardless of who serves as President. Additionally, if confirmed, I would collaborate with the NCUA's Chief Ethics Counsel and the Office of Government Ethics to design an appropriate plan for maintaining the highest ethical standards.

Q.2. Can credit unions and regulators do more to help the underserved? What specifically?

A.2. During the pandemic, the NCUA and the country as a whole have experimented with new ways to operate. For example, my nomination hearing was online, and prior to March 2020, the Senate Banking Committee had never held online hearings. The NCUA has been conducting virtual exams for credit unions throughout the COVID-19 pandemic. In the future, virtual examinations could save all parties time and money, and the NCUA Board should carefully consider making different parts of the examination process virtual.

Two years ago, Congress approved the MOBILE Act, which permitted individuals to open online accounts by uploading their identification information. This has been very helpful, especially during the pandemic, when many people do not want to physically enter credit unions, or the lobby may be closed. This pandemic forced financial institutions to explore new online options, like opening an account online, utilizing shared branch networks, or using e-signatures and verifications. Some of these practices may be useful postpandemic.

This is especially important when it comes to reaching the underserved in rural areas. Where I grew up in Maine, we were 26 miles from the nearest McDonald's and even further from the nearest bank. Remote access and online transactions can be very useful in reaching citizens who reside in rural areas. If confirmed, I will explore diverse ways credit unions can serve members who are currently geographically distant from their credit unions.

Q.3. In your testimony, you highlighted three broad priorities if confirmed to the NCUA Board. Please elaborate on what specific proposals you would advocate. How do you plan to achieve these goals?

A.3. The first priority I mentioned was managing the fallout from the current pandemic and economic downturn. This includes ensuring that credit unions are able to work with their members who are experiencing financial difficulties. As not-for-profit, member-owned financial cooperatives, credit unions do this organically and have reportedly been doing excellent work on this effort. However, I believe it is the responsibility of NCUA Board Members to talk to examiners, credit union members, credit union managers and staff, and other stakeholders to ensure credit unions continue their work and that the NCUA removes obstacles that prevent the necessary assistance from being offered.

The second priority I discussed is technology. The pandemic created a test case for how many things can be done remotely. I would like to expand technology's role in reaching the underserved. Given that the NCUA is a safety and soundness regulator, I would seek to ensure these technologies are tested fully in pilot programs before allowing widespread adoption.

Finally, I want to align incentives. As we know from the last financial crisis, we get what we incentivize. We should use incentives to create positive outcomes. For example, using the powers Congress granted it, the NCUA currently incentivizes credit unions to serve more low-income individuals by tying the low-income credit union designation to the removal of the cap on member business lending, access to grants, and the ability to access secondary capital. If one looks at the number of low-income credit unions over the last 10 years, they have grown from a quarter to almost half of all credit unions. Currently, there are limited incentives for credit unions to be designated as minority depository institutions (MDIs). The NCUA has recently created a pilot program that develops mentoring relationships among MDIs. However, I believe the NCUA should create significant incentives for credit unions to be designated as MDIs and to help create new ones.

Q.4. During the hearing, you committed to me that you would crack down on credit unions that charge their members high fees. Would you support a prohibition on credit unions imposing overdraft fees on their members?

A.4. If confirmed to the NCUA Board, I commit to reviewing credit unions' fees and working to prevent the collection of fees that are incompatible with the credit union system's mission of providing affordable financial services to working families. While I understand that certain fees are a necessary part of credit union operations, I pledge to ensure that any collected fees are consistent with the

credit union mission. Set by credit union boards, fees should not needlessly penalize the underserved and those of lesser means. The main goal should always be “a better deal,” in that any fees charged by a credit union should be a superior alternative to other options, such as late fees charged by Government or utilities.

Q.5. You said in your testimony that credit unions were chartered to serve those of modest means, and you plan to work toward solutions for those facing financial stress because of the pandemic and economic downturn. Recently, the NCUA issued an Interim Final Rule on Overdrafts, which allows credit unions to charge overdrafts after 60 days and still allows the right to offset. Would you support efforts to amend this IFR to protect credit union members from all overdrafts and offsets? If not, how is this consistent with your stated priorities?

A.5. In May, the NCUA Board considered an interim final rule (IFR) that would have modified the requirement that a Federal credit union’s written overdraft policy establish a time limit, not to exceed 45 calendar days, for a member to either deposit funds or obtain an approved loan from the Federal credit union to cover each overdraft. The old policy would have been replaced with a requirement that the written policy must establish a specific time limit that is both reasonable and applicable to all members for a member to deposit funds or obtain an approved loan from the credit union to cover each overdraft. Under the IFR, consistent with U.S. generally accepted accounting principles (GAAP), overdraft balances should have generally been charged off when considered uncollectible. The IFR was not approved and, thus, may be considered by the NCUA Board at a future date.

As I stated during my confirmation hearing, credit unions were chartered to serve those of modest means. If confirmed, I plan to work with credit unions, the Board, and Congress on solutions for those credit union members facing financial stress. Consistent with that goal, I will review this proposed IFR afresh to ensure that it provides relief to credit union members in a manner consistent with the NCUA’s responsibility to maintain the safety and soundness of the credit union system. From that perspective, if the IFR is brought up again, I will vote to approve it only if consumers and the safety and soundness of the credit union system are protected.

Q.6. Credit unions are playing an important role in helping to mitigate the economic stress of their members during the COVID–19 pandemic. What do you think NCUA should be doing to ensure credit unions are able to serve their members and plan for potential defaults on member business loans and consumer loan products?

A.6. The NCUA is, and I believe correctly, encouraging credit unions to work with impacted borrowers and not criticizing a credit union’s efforts to provide prudent relief for borrowers when such efforts are conducted in a reasonable manner with proper controls and management oversight. The NCUA has publicly stated that such efforts can ease financial pressure on borrowers and reduce a credit union’s credit risk exposure. Credit unions should be encouraged to consider a variety of loan modifications. Of course, the proper mix of solutions will vary depending on the risk tolerance

and financial strength of each institution and its membership base. The NCUA should be doing all it can to advise and support credit unions as they serve their members during this difficult time.

The economic stress experienced by credit unions and their members during this pandemic reflects the financial issues affecting families and businesses across the financial spectrum. As a result, if confirmed, I would encourage the NCUA to work closely with Congress and the other financial regulators to provide holistic solutions to this overarching health and financial crisis.

Q.7. Last year, the *New York Times* reported that predatory taxi medallion loans trapped working taxi drivers with debt while creating huge profits and compensation for credit unions and their executives. Eventually, the financial condition of these credit unions deteriorated because of heavy losses on the loans, which were poorly underwritten, exceeded regulatory lending limits, and lacked board and management oversight. According to an Office of Inspector General (OIG) Material Loss Review, NCUA was aware of the risks, but failed to take timely action.¹ NCUA recently sold most of the Taxi Medallion Loans in their portfolio to a third party asset manager. What consumer protections and oversight duties do you think NCUA should prioritize as taxi drivers and their families work with the third party to make payments or restructure their taxi medallion loans?

A.7. Much of the information about the sale of these member business loans is confidential and supervisory. As a nominee, I do not have access to this information. However, if I am confirmed by the Senate, I commit to reviewing this situation closely to determine if this was, in fact, in the best interests of the medallion holders and the National Credit Union Share Insurance Fund. I will also work to ensure proper steps are taken to protect members on any similar sales of member business loans.

Q.8. Housing is the backbone of wealth accumulation for millions of families. During the COVID-19 pandemic thousands of families are experiencing economic stress and are having a hard time making mortgage and rental payments. Should rental and mortgage assistance be provided to these families?

A.8. The NCUA does not have jurisdiction to establish national rental and mortgage assistance plans for all renters and homeowners experiencing economic stress. Should Congress decide to authorize such programs in statute, I would ensure that credit unions follow any applicable laws.

Q.9. You said in your testimony you've worked closely with credit unions in Arkansas, Texas, and Oklahoma. How will you interact with the credit industry if confirmed to the NCUA Board? Will you commit to regulating credit unions for safety and soundness and consumer protection, consistent with the NCUA mission, instead of being a cheerleader for industry demands?

A.9. If confirmed, I will work first and foremost for the credit union members and the taxpayers who are ultimately on the line for an

¹NCUA Office of Inspector General, Material Loss Review of Melrose Credit Union, LOMTO Federal Credit Union, and Bay Ridge Federal Credit Union, March 29, 2019, <https://www.ncua.gov/files/audit-reports/oig-material-loss-review-march-2019.pdf>.

insurance fund that has the full faith and credit of the United States. I pledge to listen to different stakeholders and work on areas of agreement. However, I will not take any actions that would compromise the safety and soundness of the cooperative credit union system.

Q.10. In your testimony, you indicated your support of a less frequent exam cycle for highly rated credit unions. Right now, we are in a severe economic downturn, and we know from the last crisis that even highly rated financial institutions can deteriorate quickly. Is it prudent for regulators to be pulling back on examinations and supervision during an economic crisis? How can the NCUA prevent credit union failures without a robust examination program?

A.10. In my testimony, I spoke about aligning incentives. Specifically, I want to use the incentive structures available to create a more robust credit union system. For credit unions receiving the highest marks on their NCUA exams for safety and stability, the NCUA offers a less frequent exam cycle, thereby encouraging credit unions to be safer. This also allows the NCUA to focus its resources on those who may pose a larger danger to the credit union system.

Provided the NCUA continues to employ a robust and continuous supervision model, I believe this can continue to work during the pandemic. Maintaining a focus on credit unions with lower CAMEL scores is a way to manage risk at a difficult time. Although credit unions with the highest CAMEL scores would be eligible for less frequent examinations during a stressful time such as the pandemic, examiners must closely review Call Reports to identify adverse trends and adjust supervision where necessary. This is especially important for the largest credit unions as they potentially pose the greatest risk to the National Credit Union Share Insurance Fund. I believe new technology can assist with this effort. If confirmed, I would work to ensure these options are fully explored.

Q.11. Recently, the Supreme Court denied an appeal from the American Bankers Association to review the NCUA's field of membership rules. What is your position on the NCUA's field of membership authority?

A.11. Congress created the field of membership construct for the credit union system, and the courts have affirmed its validity. It is, therefore, the Board's responsibility to employ this statutorily granted authority. The Federal Credit Union Act authorizes the NCUA to grant Federal credit union charters based on single common bond (occupational and associational), multiple common bond (more than one group, each of which has a common bond), and community (a well-defined local community, neighborhood, or rural district) criteria. The Supreme Court's denial of the American Bankers Association's petition ends nearly 4 years of uncertainty, and it allows the NCUA to focus on its mission and expand access to affordable financial services to the underserved and people of modest means.

Q.12. Some believe that the NCUA should increase its budget for consumer examination and enforcement of credit unions, particularly for large, complex credit unions. If confirmed, would you sup-

port increasing the NCUA's consumer protection budget so that there is a stronger, dedicated consumer compliance examination program?

A.12. During the consideration of the 2020 NCUA Budget, there was a debate on the number of consumer compliance examiners at the agency. If confirmed, I pledge to explore the needs of the NCUA's consumer compliance program to gain a better understanding of their challenges and resource requirements. If confirmed, I will work to ensure that the NCUA enforces all consumer protection laws and protects credit union member-owners.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN
FROM KYLE HAUPTMAN**

Q.1. What are the most effective steps NCUA can take to protect the Share Insurance Fund in light of the economic impact of COVID-19?

A.1. If confirmed, I intend to ensure the NCUA is taking proper action to protect the Share Insurance Fund.

Fortunately, the credit union industry was highly capitalized entering the crisis, with a healthy aggregate net worth of 11.37 percent as of December 2019. It is premature to determine the extent of the financial impact on credit unions in terms of return on assets, loan losses, and deposit growth.

While credit unions navigate the uncertain economic climate, the NCUA is providing them with increased flexibilities through temporary and permanent regulatory reforms. I believe such efforts should continue. Different credit unions serve different types of members who are in different financial situations. We must recognize there is likely no one-size-fits-all solution to many of the challenges that credit unions face currently.

Q.2. Do you believe it was a wise decision for the NCUA to delay the implementation of the risk-based capital rule to 2022?

A.2. Because I do not have access to the confidential supervisory information that informed their decision, I am hesitant to criticize the actions of the current NCUA Board. Further, it is important to note that the NCUA currently has risk weightings in place. The new rule would update the NCUA's rule, and have new risk weights.

If confirmed by the Senate, my priority is capital, which is the holy grail of regulation. Entering into this crisis, the credit union system as a whole was well capitalized, significantly above statutory requirements, and that is good. Indeed, in times like these, capital matters most. That is why we have it.

Q.3. Please describe your views on the effectiveness of NCUA's current process for examining credit union compliance with consumer financial protection laws. Do you believe that the current approach is sufficient to mitigate consumer abuses from credit unions with less than \$10 billion in assets? If not, what changes do you believe should be made?

A.3. Every decision the NCUA makes should ultimately protect the credit union system—and by extension, its members. If confirmed by the Senate, I will ensure that credit unions have the tools they

need to safely help their borrowers, especially during this difficult time.

As noted in your question, the NCUA has the primary authority to monitor consumer compliance at credit unions with less than \$10 billion in assets. For these credit unions, the NCUA takes a similar risk-focused approach to consumer compliance regulation and supervision as the FDIC, Federal Reserve, OCC, and CFPB. I support the risk-focused approach because it provides flexibility to regulators to respond to areas of higher risk or need. I also understand that the NCUA examines consumer complaints to determine whether credit unions are deficient in a specific area.

While it appears to me that the NCUA's consumer protection program has been effective, if confirmed by the Senate, I pledge to work with NCUA's Office of Consumer Financial Protection to gain a better understanding of the challenges involved in their work. I commit to ensuring the NCUA enforces consumer protection laws and properly protects credit union member-owners. I also commit to ensuring that the consumer compliance staff has the resources necessary to accomplish the agency's mission.

Q.4. Separate from the economic impact of COVID-19, what do you view as the greatest risks to NCUA's Share Insurance Fund? For each area of risk you identify, please describe how you believe NCUA should be monitoring and addressing those risks.

A.4. Often the greatest risk is the one you do not see coming. In the last 50 years, each of the financial crises came from areas not previously identified as a key risk to the financial system. A year ago, few would have cited a pandemic as a significant risk. While it is essential to understand the risks involved in the system, it is also important to look for risks that people are not watching.

If confirmed by the Senate, I want to spend significant time working with agency experts to understand the risks they are monitoring. I will then talk to outside people who are involved in providing financial services to the same industries to better understand the risks they see in the industry. I think it is important that a new NCUA Board Member ask the hard questions and not rely on the assurances of others.

Q.5. What steps should NCUA take to support Minority Depository Institutions (MDIs)?

A.5. If confirmed by the Senate, I want to do a top-to-bottom review of what pain points exist for the chartering of new MDI credit unions. Last year, there were only two new charters granted—one of these was for an MDI. I want to ask the hard question of why it took so long to start that MDI credit union. My goal will be to create more MDIs.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CORTEZ MASTO FROM KYLE HAUPTMAN

Q.1. What risk does climate change pose to credit unions?

A.1. The two largest components of credit union lending portfolios are home mortgage loans and automotive loans. Both of these portfolios are subject to the negative effects of natural disasters. The risk of natural disasters is often more pronounced for coastal areas,

and credit unions must use their best judgment and follow best practices when making these loans. If I am confirmed to the NCUA Board, I will ask the difficult questions to ensure that proper risk-management practices are followed for all possible risks to the National Credit Union Share Insurance Fund (Share Insurance Fund).

Q.2. How will you ensure NCUA considers those risks?

A.2. All risks to the Share Insurance Fund must be given full and careful consideration. Any credit union with substantial, concentrated risk in its portfolio due to future natural disasters should have sufficient capital and follow best practices for risk mitigation. If confirmed by the Senate, I will thoroughly review the possible risks to the Share Insurance Fund and ensure best practices are followed.

Q.3. If you were confirmed to the board of the NCUA, what steps would you take to ensure that credit unions are able to work with Fannie Mae, Freddie Mac, USDA, VA, or FHA to provide loans to families who are able to finance a home with a downpayment below 5 percent of the value of the home?

A.3. Credit unions currently play a critical role in facilitating affordable home ownership. In many cases, mortgage rates for credit union loans are significantly below the rates charged by other financial institutions. In terms of sustainability, I would stress that credit union mortgages traditionally have had significantly lower default rates than other loans. The NCUA should always remain vigilant in ensuring that underwriting standards are safe and sound. The strong historical loan performance for credit union mortgages indicates that mortgage sustainability has been a critical industry value.

Fannie Mae, Freddie Mac, USDA, VA, and FHA have programs that help credit unions manage the risks to their lending portfolios. If confirmed, I will work to understand the reasons credit unions may avoid providing these mortgages. I will also seek to find ways that will enable more credit union members to leverage the benefits of these programs.

Q.4. What are some specific ways you will work to increase access to the financial sector and wealth building opportunities such as mortgages and small business loans for black, Latino and Native Americans?

A.4. As I noted during the hearing, the NCUA must enforce the existing laws on the books, including the Fair Housing Act, the Equal Credit Opportunity Act, and the Fair Credit Reporting Act. If I am confirmed, I will work to ensure the NCUA does this vigorously. No entity—whether it is the NCUA, a credit union, or this country—can fully succeed unless we allow all individuals to have access to wealth-building opportunities.

If confirmed, I hope to work with Congress to expand the ability of credit unions to serve underserved areas and to evaluate ways to start more credit unions. Only two new credit unions were chartered last year—one was a minority depository institution (MDI).

If confirmed, I want to do a top-to-bottom review of the pain points in starting new credit unions. For example, we must examine why it took so long to start that MDI credit union. My goal is

to eliminate unnecessary pain points and create more credit unions, particularly MDIs. I would also like to expand the NCUA's Second Chance Initiative, which enables people who had minor criminal convictions years ago to be employed in the credit union system. I have seen friends and people from my high school who have changed their entire trajectory after having one minor conviction when they were 19 years old. This is an untapped pool of talent for our country.

Studies have shown that automatic savings programs can be very helpful for wealth building for low-income individuals. If confirmed, I want to encourage innovative products and publicize best practices to help to promote wealth building for all Americans.

Q.5. What is your understanding of the role NCUA plays as insurer for State-chartered, federally insured credit unions?

A.5. State-chartered credit unions are primarily regulated by their State's respective department of financial services. For federally insured, State-chartered credit unions, the NCUA's role is to ensure the safety and soundness of these institutions to safeguard the National Credit Union Share Insurance Fund, which the NCUA administers for the benefit of all federally insured credit unions.

Q.6. How do you think the transition to LIBOR will affect credit unions? What effect will you think a delay in transitioning away from LIBOR will have on credit unions?

A.6. While LIBOR is often viewed as a reference rate used by larger financial institutions, it is also important to smaller financial institutions, including community banks, savings institutions, and credit unions.

An estimated \$200 trillion in financial contracts reference USD LIBOR. LIBOR is used in contracts governing financial derivative transactions, such as interest rate swaps and interest rate caps. Some qualifying credit unions use these tools to hedge interest rate risk. Thus, discontinuing LIBOR poses a significant risk for the financial system as a whole.

Multiple options exist for a LIBOR replacement. For example, some credit unions may find an unsecured rate more accurately tracks their cost of funding than a secured rate does. I believe credit unions should find the measurement that works best for them. While the transition poses risks, delaying the transition will also create a lot of uncertainty for banks and credit unions. The best policy is one that will create more certainty and confidence in the market.

Q.7. What are your top 3 priorities that you would like the NCUA to focus on during your tenure?

A.7. As I noted in my oral testimony, I will have three priorities at the NCUA:

Priority number one is the same as America's: managing the fallout from the current pandemic and economic downturn. Over 50 million people have filed for unemployment since March. While the 2008 crisis began in the financial sector and then hit Main Street, our current crisis may be the reverse. Credit unions were chartered to serve those of modest means, and I plan to work with them, the Board, and Congress on solutions for those facing financial stress.

My second priority is technology. The pandemic created a test case for how many things can be done virtually. I would like to expand technology's role in reaching the underserved. If we recall the litigation years ago about Blockbuster Video's late fees and market dominance, the ultimate solution was American startups like Netflix. While this analogy does not perfectly align with credit unions, I am convinced innovation can provide more inclusive financial services.

Last: Aligning incentives. As we learned from the previous crisis, we get what we incentivize. An excellent policy that serves as a model here is the less-frequent exam cycle for credit unions receiving the highest marks on their NCUA exams for safety and stability. This policy enables regulators to focus on problematic credit unions, while the well-run credit unions strive to keep earning that benefit. Through this policy, safety and soundness are well aligned with serving members. Do this correctly, and we will combat poor-quality, high-priced products with better, lower-priced ones.

Q.8. What is your view on virtualization of the examination process? More broadly, what are your general thoughts on how to effectively and efficiently examine credit unions to ensure safety and soundness of the system?

A.8. The NCUA has already been working on virtual examinations; indeed, it has been a nationwide, almost worldwide, experiment in how things are done virtually or remotely during a pandemic. My July 21, 2020, nomination hearing was also conducted virtually, and before March, the Senate Banking Committee had never conducted virtual hearings.

The MOBILE Act allowed potential credit union members to open an account online by uploading their identification information. This has been very helpful, especially during the pandemic, when many people do not want to physically enter a financial institution or the lobby may be closed. The pandemic has forced us to experiment with doing things virtually, and some of these, such as utilizing virtual examinations, helping people open accounts online, and using e-signatures and verifications, may be useful postpandemic.

Q.9. What benefits do you think the Dodd–Frank Wall Street Reform and Consumer Protection Act provides to banking customers, credit unions and the overall economy?

A.9. The Dodd–Frank Wall Street Reform and Consumer Protection Act has been significantly changed by the Economic Growth, Regulatory Relief, and Consumer Protection Act (or S. 2155). Today, we are talking about a revised Dodd–Frank 2.0. The Dodd–Frank provisions I support include critical corrections to the mortgage process, including underwriting and appraisals. I believe that the provisions for the still-unused resolution authority that created an orderly liquidation process for financial firms was an appropriate development.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

LETTER SUPPORTING NOMINEE HESTER PEIRCE

June 6, 2020

The Honorable Mike Crapo, *Chairman*
 US Senate Committee on Banking, Housing
 and Urban Affairs
 534 Dirksen Senate Office Building
 Washington, D.C. 20510

The Honorable Sherrod Brown,
Ranking Member
 US Senate Committee on Banking, Housing
 and Urban Affairs
 534 Dirksen Senate Office Building
 Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

We write in strong support of Commissioner Hester Peirce to serve a second term as a Commissioner of Securities and Exchange Commission. Her [nomination](#) by President Trump to continue to serve as a Commissioner demonstrates the public's confidence in her leadership. She has a proven record of supporting proposals that reduce regulatory barriers that allow investors and businesses to more easily access public markets and her efforts to incorporate financial technology in a global marketplace.

Since joining the Commission in January 2018, Commissioner Peirce has been one of the most forward-thinking Commissioners to serve the SEC. Her innovation and free market ideology have paved the way for retail investors and first-time shareholders and savers to thrive in a marketplace that appropriately promotes competition over government mandates and intrusion. Commissioner Peirce has consistently shown she values balancing modernization and the SEC's core tenant of investor protection. Her public remarks on proposed rule-making measures have always reminded investors that she has their financial safety in mind and is dedicated to transparency for all market participants and appreciates public input and discussion when amendments or proposed rules are announced.

For the duration of her current term, Commissioner Peirce has advocated for much needed reforms to outdated rulemaking. Recently, she [supported](#) a rule to modernize and improve the proxy voting system that focused on enhancing the quality of disclosures and avoiding material conflicts of interest. She also [opposed](#) a rule that would limit retail investors from accessing leveraged investment products based on an unfair merit system.

Commissioner Peirce has been particularly vocal in support of financial technology. She has been in favor of offering safe harbor periods to allow startups a chance to flourish and championing the entrance of [new technology](#) in the market. Commissioner Peirce openly engages with the community stakeholders she is tasked to serve and has shown she is not afraid to lead on issues that challenge the status quo.

Commissioner Peirce recognizes the significance of facilitating capital formation and efficient markets. Her support of a rule to aid capital formation in the private market to better serve investors and issuers demonstrates the importance of insuring retail investors have a seat at the table while allowing private companies to "test the waters" before choosing to go public.

We thank President Trump for acknowledging Commissioner Peirce's contribution to the SEC, shareholders and strong public markets. **We strongly encourage you to support the confirmation of Commissioner Peirce for a second term.**

Sincerely,



Grover G. Norquist
President, Americans for Tax Reform



James L. Setterlund
Executive Director, Shareholder Advocacy
Forum

LETTER SUPPORTING NOMINEE KYLE HAUPTMAN



July 20, 2020

The Honorable Tom Cotton
United States Senate
326 Russell Senate Office Building
Washington, DC 20510

Dear Senator Cotton:

I wanted to drop you a note about Kyle Hauptman's nomination to the NCUA. On behalf of the Arkansas Credit Union Association, I'll say that we probably feel the same way you do - that he'll be difficult to replace yet the NCUA is lucky to have him.

I've gone to Washington for a couple decades now on behalf of Arkansas credit unions, most of which are very small, rural institutions. Our largest credit union has just over \$1 billion in assets, which would be considered small even by community-bank standards. The rest are much smaller, where you can count on one hand the number of ATMs they have. While advocating for these community-based lenders, I've encountered a lot of Congressional staffers. Kyle is the best I've dealt with.

Given his background at large, international finance firms, you might think Kyle wouldn't understand the needs of our members, who are mostly low- or moderate-income families. Yet it's quite the opposite: he has gone above and beyond to listen, respond quickly and empathize with our concerns. His knowledge of financial markets is an asset, not a liability.

I'm aware that NCUA board members aren't like Senate staffers; I'll no longer be a constituent but rather someone working for the institutions Kyle will be regulating. But I think you'll agree that he'll continue to be fair, professional and serious about what his work.

Senator, thank for your work on behalf of Arkansans.

Regards,

A handwritten signature in black ink that reads "Vicky Salkeld". The signature is written in a cursive, flowing style.

Vicky Salkeld
Executive Director
Arkansas Credit Union Association

Cc: Senator Mike Crapo, Senator Sherrod Brown