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Public Statements, Press Releases and Testimony

Chairman Clayton Outlines His "Guiding Principles" for SEC

In remarks to the Economic Club of New York on July 12, 2017, SEC Chairman Jay Clayton outlined eight guiding principles for his chairmanship and identified certain areas in which such principles could be put into practice. Chairman Clayton's remarks – his first public speech as SEC Chairman – indicated his interest in, among other things, creating a Fixed Income Market Structure Advisory Committee to give advice to the SEC on regulatory issues impacting fixed income markets and coordinating with the U.S. Department of Labor (DoL) to bring "clarity and consistency" to the issue of standards of conduct for investment professionals, noting the DoL's Fiduciary Rule is now partially in effect.

Guiding Principles

Clayton stated that the following principles will guide his SEC chairmanship:

- Principle 1: "**The SEC's mission is our touchstone**." Chairman Clayton stated that each tenet of the SEC's three-part mission – (1) to protect investors, (2) to maintain fair, orderly, and efficient markets, and (3) to facilitate capital formation – is critical.
- Principle 2: "**Our analysis starts and ends with the long-term interests of the Main Street investor**." According to the Chairman, an assessment of whether the SEC is abiding by its three-part mission must focus on the impact of its actions on "Mr. and Ms. 401(k)" and whether the SEC's actions further the long-term interests of such investors.
- Principle 3: "**The SEC's historic approach to regulation is sound**." The SEC's regulatory approach, focusing on disclosure and materiality, and using the SEC's "extensive enforcement capabilities" as a "back-stop" to disclosure rules and oversight systems, is sound. In expressing his support for disclosure-based rules, Clayton asserted that informed decision-making by investors supports more accurate valuations of securities and more efficient allocation of capital. As to the "back-stop," the anti-fraud regime established by Congress and the SEC, Clayton noted the

government's "extensive enforcement capabilities on those who try to circumvent established investor protections or otherwise engage in deceptive or manipulative acts in the markets." Taking the foregoing into account, Chairman Clayton maintained that "wholesale changes" to the SEC's fundamental regulatory approach would "not make sense."

- Principle 4: "**Regulatory actions drive change, and change can have lasting effects**." Although Chairman Clayton endorsed the disclosure-based regime of the SEC, he cautioned that the incremental impact of regulatory changes to this regime has included a significantly expanded scope of required disclosures "beyond the core concept of materiality." He cited increased disclosure as among the factors that may make alternatives for raising capital increasingly attractive for small and medium-sized companies. Chairman Clayton added that fewer small and medium-sized public companies may mean less liquid trading markets for those that remain public and, to the extent companies are not raising capital in public markets, "the vast majority of Main Street investors will be unable to participate in their growth."

- Principle 5: "**As markets evolve, so must the SEC**." Noting that technology and innovation are changing the way markets work and investors transact, Chairman Clayton stated that the SEC must take this "dynamic atmosphere" into account and "strive to ensure that our rules and operations reflect the realities of our capital markets." Further to this point, Clayton remarked that the evolution of capital markets presents opportunities for regulatory improvements and efficiencies and noted that the SEC is "adapting machine learning and artificial intelligence to new functions, such as analyzing regulatory filings." Chairman Clayton cautioned, however, that implementing regulatory change has costs, including the "significant resources" spent by companies to build compliance systems.

- Principle 6: "**Effective rulemaking does not end with rule adoption**." Chairman Clayton stated that the SEC should review its rules "retrospectively," and listen to investors and others as to areas in which rules are, or are not, functioning as intended.

- Principle 7: "**The costs of a rule now often include the cost of demonstrating compliance**." Chairman Clayton noted that the SEC must ensure that, at the time of adoption, the SEC has a "realistic version for how rules will be implemented," as well as how the SEC will examine for compliance. In this regard, according to Clayton, "[v]aguely worded rules can too easily lead to subpar compliance solutions or an overinvestment in control systems."

- Principle 8: "**Coordination is key**." According to Chairman Clayton, coordination with, between, and among all of the various U.S. federal regulatory bodies, state securities regulators, self-regulatory organizations and various other regulatory players "is essential to a well-functioning regulatory environment." To illustrate his point, Clayton cited the dual regulatory structure for over-

> the-counter derivatives called for by the Dodd-Frank Act and working with the CFTC in this respect. Chairman Clayton noted that cybersecurity is also an area where coordination is critical, adding that the SEC is working with "fellow financial regulators to improve our ability to receive critical information and alerts and react to cyber threats."

Fixed Income Markets

In a portion of his remarks titled, "Putting Principles into Practice," Chairman Clayton observed that the "time is right for the SEC to broaden its review of market structure to include specifically the efficiency, transparency, and effectiveness of our fixed income markets." The SEC, according to Clayton, must explore whether fixed income markets "are as efficient and resilient as we expect them to be, scrutinize our regulatory approach, and identify opportunities for improvement." In this connection, Chairman Clayton stated that he has asked the SEC staff to develop a plan for creating a Fixed Income Market Structure Advisory Committee.

Fiduciary Rule

Chairman Clayton also touched upon the DoL's Fiduciary Rule, noting that he recently issued a statement seeking public input on standards of conduct for investment advisers and broker-dealers. Chairman Clayton expressed hope that the SEC can "act in concert with our colleagues at the [DoL] in a way that best serves the long-term interests of Mr. and Ms. 401(k)." He also noted that "any action will need to be carefully constructed, so that it provides appropriate and meaningful protections but does not result in Main Street investors being deprived of affordable investment advice or products."

The transcript of Chairman Clayton's remarks is available at: https://www.sec.gov/news/speech/remarks-economic-club-new-york.

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