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CORPORATE GOVERNANCE



SUBJECT

NEW SEC CHAIRMAN CLAYTON SETS TONE FOR THE SEC'S AGENDA FOCUSED ON MAIN STREET INVESTORS

SUMMARY

On July 12, 2017, SEC Chairman Jay Clayton gave his first [public speech](#) to the Economic Club of New York, offering a look into his views on SEC policy-making and its effects on the U.S. economy. He began by laying out eight guiding principles for the SEC along with several highlighted areas where principles are to be put into practice, particularly in areas that affect “Main Street” investors – individuals within the general population who invest in the capital markets.

DETAILS

Guiding Principles of the SEC

1. **“The SEC’s three-part mission is our touchstone”**: To protect investors; to maintain fair, orderly, and efficient markets; and to facilitate capital formation.
2. **“Our analysis starts and ends with long-term interests of the Main Street investor”**: Consideration of the impact SEC actions have on “Mr. and Ms. 401(k)” – are they benefitting, are there appropriate investment opportunities, do they have enough information to make investment decisions?
3. **“The SEC’s historic approach to regulations is sound”**: There will not be wholesale changes to the three-pronged regulatory architecture – disclosure and materiality; rules applicable to market agents (e.g., exchanges, clearing agencies, broker-dealers, and investment advisors); and anti-fraud and enforcement.
4. **“Regulatory actions drive change, and change can have lasting effects”**: Need to consider the cumulative impact that increased disclosure and regulatory burdens have on the notable reduction in the number of U.S.-listed public companies.
5. **“As markets evolve, so must the SEC”**: While embracing disruptors of technology and innovation, the SEC must ensure its rules and operations address both the need to change and the cost that is borne by investors.

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6. "Effective rulemaking does not end with rule adoption":

Just as robust processes for obtaining public input and economic analysis are performed at the proposal and adoption stages, enacted rules require retrospective review to ensure they are functioning as intended.

7. "The costs of a rule now often include the cost of demonstrating compliance":

Need to align the wording of and guidance for rules in recognition of the practical costs – e.g., those to be incurred by companies, third party advisors, and compliance solutions – with the vision of how the rules are intended by the SEC to be implemented.

8. "Coordination is key":

The SEC must work closely with, between, and among all domestic and international organizations - two specific examples in which coordination is key include governance of over-the-counter derivatives and cybersecurity.

Principles to Practice

In putting these principles into practice, Chairman Clayton focused on five particular areas where he sees opportunities:

1. Enforcement and Examinations:

The SEC will continue to deploy significant resources to detect and deter fraud. Several areas highlighted in his speech include [affinity fraud](#), [microcap fraud](#), [pump-and-dump scammers](#), those who prey on retirees, and sophisticated cyber thieves. Caution, however, was placed on the practice of punishing responsible companies who find themselves victims of cyber-crimes.

2. Capital Formation:

Chairman Clayton has been vocal about addressing the regulatory burdens cited by many private companies who opt to remain private. As a first step, earlier in July, the SEC expanded the JOBS Act approach by opening up the SEC's Division of Corporate Finance non-public review process to IPO draft registration statements of larger domestic and non-U.S. companies beyond emerging growth companies (EGCs) with an eye to encouraging the prospect of selling shares in the U.S. public markets and doing so at an earlier stage in a company's development. Another opportunity lies within Rule 3-13 of Regulation S-X which allows companies to request modifications to their financial reporting requirements if they feel certain disclosures are burdensome to generate and may not be material to the total information being made available to investors.

3. Market Structure:

Promotion of action and review to ensure the equity market structure is optimal. This will include:

- A pilot program to test how adjustments to the access fee cap under Rule 610 of the Securities Exchange Act of 1934 would affect equities trading.
- Extension of the tenure of the SEC's Equity Market Structure Advisory Committee (EMSAC), as the EMSAC's charter is set to expire in August 2017.
- Creation of a Fixed Income Market Structure Advisory Committee, akin to EMSAC, to review and advise the SEC as to the efficiency and resiliency of the fixed income products market, as a more stable option for the increasing number of "Baby Boomer" retirees.

4. Investment Advice and Disclosures to Investors:

Chairman Clayton is looking to specifically review the standards of conduct that investment professionals must follow in providing advice to Main Street investors. Focal points include:

- [The Department of Labor \(DOL\) Fiduciary Rule](#) came into effect in early June and expands the investment advice fiduciary definition under the [Employee Retirement Income Security Act of 1974](#) (ERISA). There has been much debate and discussion about the potential impact of this rule. In June, Chairman Clayton [requested public input](#) on standards for conduct for investment advisers and broker-dealers to evaluate potential regulatory actions in light of current market activities and risk.
- Several initiatives are underway to improve access to meaningful investment information including proposed rulemaking to follow the SEC [report](#) issued November 2016 on modernizing and simplifying Regulation S-K disclosure rules.

5. Resources to Educate Investors:

Emphasis on leveraging technology to make a wealth of information available to investors and increase engagement with the SEC including providing resources to investors on how to conduct online background searches on investment professionals.

SEC Chairman Clayton's full speech is accessible [here](#). For more information and educational opportunities on these and other topics related to audit committee oversight, please visit [BDO's Center for Corporate Governance and Financial Reporting](#).