REPORT ON OBJECTIVES FISCAL YEAR 2016

Office of the Investor Advocate

U.S. SECURITIES AND EXCHANGE COMMISSION

The Office of the Investor Advocate was established pursuant to Section 915 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as codified under Section 4(g) of the Securities Exchange Act of 1934, 15 U.S.C. § 78d(g).

OFFICE OF THE INVESTOR ADVOCATE

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The Office of the Investor Advocate (sometimes referred to herein as the "Office" or "we" or "our") was established pursuant to Section 915 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), as codified under Section 4(g) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78d(g). Exchange Act Section 4(g)(2)(A)(ii) provides that the Investor Advocate be appointed by the Chair of the U.S. Securities and Exchange Commission (the "Commission" or the "SEC") in consultation with the other Commissioners and that the Investor Advocate report directly to the Chair.[1] On February 24, 2014, SEC Chair Mary Jo White appointed Rick A. Fleming as the Commission's first Investor Advocate.

Exchange Act Section 4(g)(6) requires the Investor Advocate to file two reports per year with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.[2] A Report on Objectives is due not later than June 30 of each year, and its purpose is to set forth the objectives of the Investor Advocate for the following fiscal year.[3] The instant report is the Investor Advocate's second annual Report on Objectives. It contains a summary of the Investor Advocate's primary objectives for Fiscal Year 2016, beginning October 1, 2015.

A Report on Activities is due no later than December 31 of each year, and it describes the activities of the Investor Advocate during the immediately preceding fiscal year.[4] Among other things, the report must include information on steps the Investor Advocate has taken to improve the responsiveness of the Commission and self-regulatory organizations ("SROs") to investor concerns, a summary of the most serious problems encountered by investors during the reporting period, identification of Commission or SRO action that was taken to address those problems, and recommendations for administrative and legislative actions to resolve problems encountered by investors.[5] The next Report on Activities will be filed by December 31, 2015, and will describe the activities of the Office of the Investor Advocate during Fiscal Year 2015, covering the period from October 1, 2014 through September 30, 2015.

Disclaimer: Pursuant to Section 4(g)(6)(B)(iii) of the Exchange Act, 15 U.S.C. § 78d(g)(6)(B)(iii), this Report is provided directly to Congress without any prior review or comment from the Commission, any Commissioner, any other officer or employee of the Commission, or the Office of Management and Budget. Accordingly, the Report expresses solely the views of the Investor Advocate. It does not necessarily reflect the views of the Commission, the Commissioners, or staff of the Commission, and the Commission disclaims responsibility for the Report and all analyses, findings, and conclusions contained herein.

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MESSAGE FROM THE INVESTOR ADVOCATE

The Office of the Investor Advocate was created at the Securities and Exchange Commission on February 24, 2014. The three core functions of the Office include the work of an Ombudsman, the support of the SEC's Investor Advisory Committee, and the pursuit of policies that are beneficial for investors. As a small team, we expend great effort to provide valuable service in all three areas, and we will continue to enhance those services in Fiscal Year 2016.

The Commission's first Ombudsman, Tracey L. McNeil, began her duties on September 22, 2014. In her initial months in this new role, Ms. McNeil has begun helping investors resolve problems they have with the Commission or self-regulatory organizations. Much of her time has also been spent developing systems and laying the necessary groundwork to receive, process, and track inquiries from investors. Once those systems are operational, Ms. McNeil will engage in outreach to raise public awareness of this new service for investors. In June 2015, an attorney was hired to assist the Ombudsman in establishing procedures and processing inquiries.

The Investor Advocate is a statutory member of the Investor Advisory Committee (the "Committee" or "IAC"), and I participate in the work and deliberations of the Committee. My Office also provides the necessary staff support to the Committee. This involves many tasks, including the drafting of meeting minutes, processing the appointments of new members, assisting with travel arrangements and reimbursements, scheduling and setting up meeting rooms, publishing meeting notices and agendas, and helping to arrange briefings by Commission staff.

We will continue to devote significant resources to support the work of the IAC in Fiscal Year 2016. In addition, I will personally work to raise awareness of IAC recommendations among Commission staff and the Commissioners. Each of the IAC's recommendations to date is summarized in this Report, and the Commission is required by Exchange Act Section 39 to respond "promptly" to each recommendation. In Fiscal Year 2016, I will endeavor to improve the timeliness of Commission responses to IAC recommendations.

In addition to the work of the Ombudsman and our support of the IAC, a substantial portion of our energies are devoted to the policymaking process. In short, our job is to help ensure that the needs of investors are considered as decisions are being made within the Commission, at SROs, and in Congress.

In Fiscal Year 2016, the Office will begin reviewing every significant rulemaking that the Commission

and SROs propose. We will examine the impacts on investors and, when needed, advocate for changes that will benefit investors. However, given the broad scope of policy issues impacting investors, as well as the limited resources of our office, we will again focus more intently on a manageable number of issues in which we can develop expertise and provide a stronger voice for investors.

In the current fiscal year, we are primarily focused on the six core policy areas that were set forth in the Report on Objectives filed in June 2014. We are completing our work in three of those areas (investor flight, elder fraud, and cybersecurity), and the remaining three areas involve multi-year projects that will remain on our agenda for Fiscal Year 2016. Accordingly, we will continue our focus on equity market structure, municipal market reforms, and ways to improve the effectiveness of disclosure.

With the addition of another attorney to the policy side of the Office in June 2015, we will be able to expand our agenda somewhat in Fiscal Year 2016. Thus, as described more fully in this Report, we will begin to focus on some additional challenging topics: a fiduciary duty for broker-dealers, the investing and behavioral characteristics of the Millennial generation, the readiness of Americans for retirement, shareholder rights and corporate governance, and financial reporting and auditing.

Of course, other issues are important, too, but I believe we can be most effective in advocating for investors if we concentrate our finite resources on a limited number of issues. By maintaining a disciplined focus, we will be able to develop the requisite level of expertise that will enable us to provide meaningful input to policymakers and successfully advance policies that benefit investors.

We will also achieve a greater impact for investors if we are able to engage in the policymaking process at the Commission early on, while concepts are still developing, instead of being placed in the position of critiquing fully formulated proposals. I am pleased to report that, with the support of SEC Chair Mary Jo White, our views are beginning to be considered earlier in rulemakings that fall within our policy agenda. We look forward to providing a strong, reasoned voice for investors as future rules are developed.

In closing, I want to acknowledge the support of the Commissioners and my colleagues on the Commission staff. They are providing my Office with the tools and access we need to be successful over the long term, with an appropriate level of independence as envisioned by Congress when it created the Office.

I am pleased to submit this Report on Objectives for Fiscal Year 2016 on behalf of the Office of the Investor Advocate, and I would be happy to answer any questions from Members of Congress.

Sincerely,

Rick A. Fleming
Investor Advocate

OBJECTIVES OF THE INVESTOR ADVOCATE

As set forth in Exchange Act Section 4(g)(4), 15 U.S.C. § 78d(g)(4), the Investor Advocate is required to perform the following functions:

(A) assist retail investors in resolving significant problems such investors may have with the Commission or with SROs;
(B) identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs;
(C) identify problems that investors have with financial service providers and investment products;
(D) analyze the potential impact on investors of proposed regulations of the Commission and rules of SROs; and
(E) to the extent practicable, propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.

ASSISTING RETAIL INVESTORS

Exchange Act Section 4(g)(4)(A) directs the Investor Advocate to assist retail investors in resolving significant problems such investors may have with the Commission or with SROs.[6] To help accomplish that objective, the Investor Advocate has appointed an Ombudsman to, among other things, act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with SROs.[7] The Ombudsman is also required to "submit a semi-annual report to the Investor Advocate that describes the activities and evaluates the effectiveness of the Ombudsman during the preceding year" (the "Ombudsman's Report").[8] As required by statute, the Ombudsman's Report is included within this Report on Objectives.[9]

IDENTIFYING AREAS IN WHICH INVESTORS WOULD BENEFIT FROM REGULATORY CHANGES

Exchange Act Section 4(g)(4)(B) requires the Investor Advocate to identify areas in which investors would benefit from changes in the regulations of the Commission or the rules of SROs.[10] This is a broad mandate that authorizes the Investor Advocate to examine the entire regulatory scheme, including existing rules and regulations, to identify those areas that could be improved for the benefit of investors. For example, the Investor Advocate may look at the rules and regulations governing existing equity market structure to determine whether any changes would benefit investors. Similarly, the Investor Advocate may review current municipal market practices to evaluate whether any regulatory changes might benefit investors. These and similar other concerns are discussed in greater detail below in the section entitled *Policy Agenda for Fiscal Year 2016*.

IDENTIFYING PROBLEMS WITH FINANCIAL SERVICE PROVIDERS AND INVESTMENT PRODUCTS

Exchange Act Section 4(g)(4)(C) requires the Investor Advocate to identify problems that investors have with financial service providers and investment products.[11] The Investor Advocate continues to monitor investor inquiries and complaints, SEC and SRO staff reports, enforcement actions, and other data to determine which financial service providers and investment products may be problematic. As required by Exchange Act Section 4(g)(6), these problems will be described in the Reports on Activities to be filed in December of each year.

ANALYZING THE POTENTIAL IMPACT ON INVESTORS OF PROPOSED RULES AND REGULATIONS

Exchange Act Section 4(g)(4)(D) directs the Investor Advocate to analyze the potential impact on investors of proposed regulations of the Commission and proposed rules of SROs.[12] As a matter of routine, the Office now reviews all significant rulemakings of the Commission and SROs. It also communicates with investors and their representatives to determine the potential impact on investors of proposed rules.

PROPOSING APPROPRIATE CHANGES TO THE COMMISSION AND TO CONGRESS

Exchange Act Section 4(g)(4)(E) provides that, to the extent practicable, the Investor Advocate may propose to the Commission changes in the regulations or orders of the Commission and to Congress any legislative, administrative, or personnel changes that may be appropriate to mitigate problems identified and to promote the interests of investors.[13] As we study the issues in our Policy Agenda for Fiscal Year 2016, as set forth below, we will likely make recommendations to the Commission and Congress for changes that will mitigate problems encountered by investors.

SUPPORTING THE INVESTOR ADVISORY COMMITTEE

Exchange Act Section 39, as amended by Section 911 of the Dodd-Frank Act, establishes the Investor Advisory Committee.[14] As discussed in greater detail below in the section entitled *Summary of IAC Recommendations and SEC Responses*, the purpose of the Committee is to advise and consult with the Commission on regulatory priorities, issues impacting investors, initiatives to protect investors, and related matters. By statute, the Investor Advocate is a member of the IAC.[15] In addition, the Office continues to provide staff and operational support to the IAC.

POLICY AGENDA FOR FISCAL YEAR 2016

The statutory mandate for the Office of the Investor Advocate is broad, but our resources are limited. Because we will be unable to examine every possible issue in depth in Fiscal Year 2016, it will be necessary to narrow our focus to a manageable number of issues so that we can advise policymakers effectively and achieve the greatest impact for investors.

After discussions with numerous knowledgeable individuals, both inside and outside the Commission, and after due consideration, the Investor Advocate has determined that the Office will focus on the following issues during Fiscal Year 2016:

- Equity Market Structure
- Municipal Market Reform
- Fiduciary Duty
- Disclosure Effectiveness
- Millennials
- Retirement Readiness
- Shareholder Rights and Corporate Governance
- Financial Reporting and Auditing

Some of the items listed above may appear familiar because they were on the policy agenda for the previous fiscal year. They remain on the agenda for Fiscal Year 2016 because they warrant continued consideration in light of their magnitude. Undoubtedly, other issues will arise that require the attention of the Office, but the aforementioned issues will remain on our policy agenda.

EQUITY MARKET STRUCTURE

As noted in last year's Report on Objectives, the secondary market for U.S.-listed equities has become dispersed and complex, partly as a result of the decades-long transition from a market structure dominated by manual trading to a market structure characterized primarily by automated trading.[16] The evolution of technologies for generating, routing, and executing orders has enhanced the speed, capacity, and sophistication of the trading functions that are available to market participants.[17] Additionally, trading volume has become dispersed among many trading centers that compete for order flow in the same stocks, and trading centers are offering a wide range of services designed to attract different types of market participants with varying trading needs.[18]

Regulatory actions have also contributed to changes in equity market structure—for example, Regulation NMS (adopted in 2005),[19] Regulation ATS (adopted in 1998),[20] the Order Handling Rules (adopted in 1996),[21] and certain enforcement actions. In particular, the equity market has evolved significantly since the adoption of Regulation NMS, which was intended to modernize and strengthen the regulatory structure of the U.S. equity markets.[22] Regulation NMS was also intended to "protect investors, promote fair competition, and enhance market efficiency."[23] The Commission is evaluating these regulations as part of its comprehensive review of equity market structure, and

several SROs have also joined the public discussion regarding reforms that might benefit investors and other market participants.

In May 2015, the Commission's recently formed Equity Market Structure Advisory Committee (the "EMSAC") met for the first time to discuss and debate the structure and operations of the U.S. equities market. Under its charter, the EMSAC will provide advice and recommendations to the Commission specifically related to equity market structure issues.[24] The EMSAC is currently considering the implications of Rule 611 of Regulation NMS, also known as the "Order Protection Rule" or the "Trade-Through Rule,"[25] and has publicly indicated an interest in evaluating the complex interaction between Rule 611 and other parts of Regulation NMS, including order execution and routing information under Rules 605 and 606, access fees under Rule 610, and one cent minimum pricing under Rule 612.[26]

Several SROs have also publicly proposed reforms to Regulation NMS that could potentially provide benefits to investors. In December 2014, Intercontinental Exchange, Inc., as parent company of three exchanges, proposed a 'grand bargain' to reduce the maximum exchange access fees under Rule 610 from 30 cents to 5 cents per 100 shares in return for a "trade at" rule that would give more precedence to exchanges displaying the best orders under Rule 611.[27] In January 2015, BATS Global Markets, Inc. ("BATS"), as parent company of four exchanges, filed a Petition for Rulemaking ("Petition") with the Commission to amend Regulation NMS in ways it believes would enhance the quality of the U.S. equity markets to the benefit of long term investors.[28] In its Petition, BATS proposed to reduce access fees, enhance transparency by requiring brokers to better disclose their execution quality, and reduce fragmentation by denying small trading centers certain advantages currently afforded by Regulation NMS. Related to the public discourse on access fees, in February 2015, the Nasdaq Stock Market LLC ("Nasdaq") implemented an experimental pricing schedule to lower access fees for 14 securities trading on its market.[29] Nasdaq began providing statistical reports on the effects of the experiment in March 2015 and has committed to continue making such data publicly available.[30]

As noted in BATS's Petition, enhancements to Regulation ATS are also under discussion. Currently, around 35% of market volume in NYSE and Nasdaq-listed stocks is executed in dark alternative trading systems and broker-dealer platforms, rather than on lit venues.[31] These venues are not required to disclose their rules of operation to their customers or the public, and they typically only provide limited information about how they operate.[32] Greater information about the operation of these venues could allow sophisticated investors to better compare the trading venues and determine which venues and order routing products meet their trading needs.

Other market participants, including asset managers, have also voiced opinions and suggestions for how they believe the market could be adjusted to better serve investors. For example, in testimony before the Senate Banking Committee, the Global Head of Trading for Invesco Ltd., Kevin Cronin, called for fairer dissemination of market data to all market participants, the elimination of maker-taker pricing, and other reforms.[33]

In May 2015, the Commission approved a proposal by the national securities exchanges and the Financial Industry Regulatory Authority ("FINRA") for a two year pilot program that would widen the minimum quoting and trading increments—or "tick sizes"—for stocks of some smaller companies.[34] The Commission intends to use the pilot, which is scheduled to begin on May 6, 2016, to assess whether wider tick sizes enhance the market quality of these stocks for the benefit of issuers and investors. Data generated during the pilot will be released publicly on an aggregated basis, and the exchanges and FINRA will submit

their initial assessment on the pilot's impact later that year.

In Fiscal Year 2016, we will monitor public comments, review data, and otherwise assess the various ongoing initiatives involving equity market structure. For example, we will review recommendations generated by the EMSAC, and we will look for ways to ensure that the EMSAC appropriately considers the views and needs of individual and institutional investors during its work. We will also evaluate how individual and institutional investors may be affected by various regulatory proposals, including the Petition for Rulemaking currently before the Commission. Finally, we will monitor public commentary on the approved tick-size pilot program and prepare to review the data produced in the following fiscal year.

In addition to monitoring on-going initiatives, we will undertake our own analysis of potential market structure reforms. We will consider numerous questions, including the following:

- What are the negative impacts on investors from the current equity market structure?
- Compared to the *status quo*, how might the various proposals better serve investors?
- How could we improve liquidity and price discovery?
- Can current market complexity be significantly addressed through more fulsome disclosure of ATS operations, trading venue routing, and the quality of execution services, or are more prescriptive measures needed?
- Could a "trade at" rule serve investors by further encouraging the display of limit orders on exchanges, or are the varying needs of investors better served with some level of fragmentation, including among dark pools?
- Do intermediaries' existing conflicts of interest harm investors, and how could we address that concern?
- Could lowering exchange access fees and rebates improve market quality for investors?

Like others at the Commission, the Office of the Investor Advocate is sensitive to the fact that market structure issues are complex and require a broad understanding of statutory requirements, economic principles, and practical trading considerations.[35] We are also mindful of the Commission's three-part mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. However, while we recognize that competing interests must be balanced for markets to work efficiently, in the coming year we will continue to focus on one overriding concern as we examine equity market structure issues: whether the equity market today is fair for investors large and small. This is an indispensable foundation for vibrant markets and robust capital formation.

MUNICIPAL MARKET REFORM

According to Federal Reserve Board estimates, the value of outstanding municipal bonds totaled approximately $3.65 trillion at the end of the fourth quarter of 2014.[36] Roughly 42 percent of municipal securities were held *directly* by individual investors as of December 31, 2014, and another 28 percent were owned indirectly by retail investors through mutual funds, money market funds, or closed end funds and exchange-traded funds.[37] Municipal securities can be an important part of investors' retirement plans and a valuable source of funds for local projects that affect investors' quality of life in their communities.

On July 31, 2012, the Commission issued a Report on the Municipal Securities Market (the "Municipal Market Report"), which included several recommendations to be considered for improvement of the municipal securities market.[38] In part, the Municipal Market Report discussed and made recommendations relating to price transparency, transaction costs, and dealer pricing obligations to customers.[39]

According to the Municipal Market Report, the relative illiquidity and lack of price transparency in municipal securities has inhibited the efficiency of

the municipal securities market.[40] While municipal bond dealers generally have access to a variety of sources of municipal securities pricing information, retail investors have access to relatively little pricing information.[41] Although some municipal securities pricing information is available on publicly accessible websites, retail investors may not be aware of the websites or may not be able to effectively use them because they lack the necessary expertise.[42] The Municipal Market Report concluded that "the wider availability of more robust pricing information should facilitate the ability of market professionals and their customers to determine the best price for a security and where to obtain it."

The Municipal Market Report made a variety of recommendations to improve price transparency, fair pricing, and best execution obligations.[43] The Office of the Investor Advocate supports the adoption of these types of reforms and continues to explore and encourage developments in these areas.

For example, the Municipal Market Report recommended that the Municipal Securities Rulemaking Board ("MSRB") "consider a rule that would require municipal bond dealers to seek 'best execution' of customer orders for municipal securities."[44] On August 6, 2013, the MSRB issued a concept release seeking comments on this recommendation,[45] and the MSRB subsequently proposed a best execution rule.[46] On December 5, 2014, the SEC issued an order approving the proposed amendments, and the rule changes are set to become effective on December 7, 2015.[47]

Once effective, the MSRB's best execution rule will require municipal securities dealers to use "reasonable diligence" in seeking to obtain for their retail customers the most favorable terms reasonably available under prevailing market conditions.[48]

The Municipal Market Report also recommended that the MSRB disclose markup or markdown information to customers.[49] MSRB rules already require municipal bond dealers acting as agents to disclose on the transaction confirmation the amount of any remuneration received from the customer.[50] However, there is no comparable requirement if the municipal securities dealer is acting as a principal (by selling securities out of its own inventory).[51] The Municipal Market Report concluded that because municipal bond dealers execute almost all customer transactions in a principal capacity, customers receive very little confirmation disclosure of their dealer's compensation.[52] Thus, the Municipal Market Report recommended the MSRB "consider requiring municipal bond dealers to disclose to customers, on confirmations for riskless principal transactions, the amount of any markup or markdown."[53]

In 2014, the MSRB announced that it would develop a proposal regarding disclosure of information by dealers to retail customers to help them independently assess the prices they were receiving.[54] On November 17, 2014, the MSRB and FINRA released companion proposals to require disclosure of pricing reference information on customer confirmations for transactions in fixed income securities.[55] Under both proposals, dealers in retail-sized fixed income transactions would be required to disclose on a customer confirmation the price of certain same-day principal trades in the same security and the difference between that price and the customer's price.[56]

We recognize the efforts put forth by the MSRB, FINRA, and the SEC in addressing the municipal market shortcomings highlighted in the Municipal Market Report, including best execution and pricing reference. In Fiscal Year 2016, we will continue to work with others at the Commission and the relevant SROs to encourage additional reforms designed to benefit investors in the municipal securities markets. In particular, we will explore ways to improve pretrade price transparency and the accounting practices of issuers.

To the extent that legislation is required to improve disclosures and practices in this market, we will make recommendations to Congress as appropriate.

FIDUCIARY DUTY

Many individual investors rely on broker-dealers and investment advisers for investment advice to help them manage their investments and meet their financial goals.[57] Generally, these investors expect that the investment advice they receive is provided in their best interest.[58] Some investors may not be aware, however, that broker-dealers and investment advisers are subject to different standards under federal law when providing advice about securities.[59] Indeed, many investors are confused about the different standards of care that apply to investment advisers and broker-dealers with respect to the investment advice they provide.[60] This apparent confusion has stoked concern among regulators and lawmakers in recent years.[61]

While the regulatory regimes for investment advisers and broker-dealers are both designed to protect investors, they do so in different ways.[62] Generally, this is because the legal standards of conduct for broker-dealers and investment advisers developed out of differing and complex histories.[63] While both sets of standards evolved in large part from the general antifraud provisions of the respective federal securities laws, they were applied differently to the two industries.[64] The standard for broker-dealers is rooted in specific Commission and FINRA rules that are supplemented by interpretive guidance.[65] In contrast, the investment adviser standard evolved primarily through Commission and staff interpretive pronouncements under the antifraud provisions of the Investment Advisers Act of 1940 (the "Advisers Act"), and through case law and enforcement actions.[66]

Under the Advisers Act, an investment adviser is a fiduciary whose duty is to serve the best interests of its clients.[67] The fiduciary standard applies to the totality of an investment adviser's relationship with its clients and prospective clients, and it imposes upon an investment adviser the "affirmative duty of 'utmost good faith, and full and fair disclosure of all material facts,' as well as an affirmative obligation to 'employ reasonable care to avoid misleading'" its clients and prospective clients.[68] The fiduciary standard encompasses the duties of loyalty and care.[69] The duty of loyalty requires an investment adviser to serve the best interests of its clients, which includes an obligation not to subordinate a client's interests to its own.[70] The duty of care requires an investment adviser to "make a reasonable investigation to determine that it is not basing its recommendations on materially inaccurate or misleading information."[71] In practical terms, the fiduciary standard requires an adviser with a material conflict of interest to either eliminate that conflict or fully disclose to its clients all material facts relating to the conflict.[72]

Broker-dealers operate under a different regulatory regime than investment advisers. For example, broker-dealers that conduct business with the public generally must become members of FINRA.[73] In addition, under the antifraud provisions of the federal securities laws and SRO rules, including SRO rules governing "just and equitable principles of trade and high standards of commercial honor," broker-dealers are required to deal fairly with their customers.[74] Although broker-dealers generally are not subject to a fiduciary duty

under the federal securities laws, courts nonetheless have found broker-dealers to have a fiduciary duty under certain circumstances.[75] Moreover, broker-dealers are subject to statutory, Commission, and SRO requirements designed to promote business conduct that protects customers from abusive practices, including practices that may be unethical but not necessarily fraudulent.[76] The three ways that the federal securities laws and rules, as well as SRO rules, address broker-dealer conflicts are through express prohibition, mitigation, or disclosure.[77]

As part of their duty of fair dealing, broker-dealers have an obligation of "suitability," which generally requires a broker-dealer to make recommendations that are consistent with the interests of each customer.[78] In other words, broker-dealers should recommend only those investments that are suitable for a customer in light of the customer's risk tolerance, liquidity needs, investment horizon, and other factors that are specific to the individual customer.[79] Broker-dealers also are required, under certain circumstances, to disclose material conflicts of interest to their customers—in some cases, at the time the transaction is completed[80]—and the federal securities laws and FINRA rules prohibit broker-dealers from participating in certain transactions involving particularly acute potential conflicts of interest.[81]

The Section 913 Study

Section 913 of the Dodd-Frank Act required the Commission to conduct a study analyzing the obligations of brokers, dealers, and investment advisers.[82] Among other things, Section 913 directed the Commission to evaluate: (1) the effectiveness of existing legal or regulatory standards of care (imposed by the Commission, a national securities association, and other federal or state authorities) for providing personalized investment advice and recommendations about securities to retail customers; and (2) whether there are legal or regulatory gaps, shortcomings, or overlaps in legal or regulatory standards in the protection of retail customers relating to the standards of care for providing personalized investment advice about securities to retail customers that should be addressed by rule or statute.[83]

On January 21, 2011, SEC staff issued the required Study on Investment Advisers and Broker-Dealers (the "Study").[84] It contained a number of recommendations designed to increase investor protection and reduce investor confusion. In addressing the standard-of-care criteria enumerated above, the Study recommended, among other things, that the Commission promulgate rules to provide that:

> [T]he standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.[85]

In other words, the Study recommended that the Commission implement a uniform fiduciary standard for broker-dealers and investment advisers. The Study urged the Commission to consider "rulemakings that would apply expressly and uniformly to both broker-dealers and investment advisers, when providing personalized investment advice about securities to retail customers, a fiduciary standard *no less stringent* than currently applied under" certain provisions of the Advisers Act (emphasis added).[86]

The Study acknowledged, however, that Section 913 prevents the Commission from applying a fiduciary standard in a way that would undermine certain business practices of broker-dealers. Thus, any rule adopted by the Commission must accommodate the receipt of commission-based compensation (or other standard compensation) and allow broker-dealers to sell only proprietary or a limited range

of products.[87] In addition, the Commission cannot impose a duty of care or loyalty that continues after the broker-dealer has stopped providing personalized investment advice to a retail customer.[88]

Mindful of these considerations, the Study made several related fiduciary duty recommendations that would "suggest a path toward implementing a uniform fiduciary standard for investment advisers and broker-dealers when providing personalized investment advice about securities to retail customers."[89] These recommendations addressed the standard of conduct, the duty of loyalty, principal trading, the duty of care, personalized investment advice about securities, and investor education with respect to a uniform fiduciary standard.[90]

The Study argued that the uniform fiduciary standard and related disclosure requirements might offer potential benefits, including: heightened investor protection; heightened investor awareness; a flexible standard that could accommodate different existing business models and fee structures; preservation of investor choice; no likely decrease in investors' access to existing products or services or service providers; that investment advisers and broker-dealers would continue to be subject to all of their existing duties under applicable law; and the requirement that investors receive investment advice that is given in their best interest, under a uniform standard, regardless of the regulatory label (broker-dealer or investment adviser) of the professional providing the investment advice. [91]

SEC Request for Data

On March 1, 2013, the Commission issued a request for data and other information, in particular quantitative data and economic analysis, relating to the benefits and costs that could result from various alternative approaches regarding the standards of conduct and other obligations of broker-dealers and investment advisers.[92] The Commission sought this information to inform its consideration of alternative standards of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers, as well as to inform its consideration of "potential harmonization" of certain other aspects of the regulation of broker-dealers and investment advisers.[93]

Investor Advisory Committee Recommendations

On November 22, 2013, the Investor Advisory Committee adopted a set of recommendations encouraging the SEC to establish a fiduciary duty for broker-dealers when they provide personalized investment advice to retail investors.[94] The IAC's preferred approach to accomplishing this objective would involve narrowing the exclusion for broker-dealers within the definition of "investment adviser" under the Advisers Act.[95] In effect, this would require anyone who provides personalized investment advice to become registered as an investment adviser and satisfy the fiduciary duty of an adviser.

As an alternative, the IAC recommended the adoption of a rule under Section 913 of the Dodd-Frank Act to require broker-dealers to act in the best interests of their retail customers when providing personalized investment advice, with sufficient flexibility to permit certain sale-related conflicts of interest that are fully disclosed and appropriately managed.[96] In addition, the IAC recommended the adoption of a uniform, plain English disclosure document to be provided to customers and potential customers of broker-dealers and investment advisers.[97] The document would disclose information about the nature of services offered, fees and compensation, conflicts of interest, and the disciplinary record of the broker-dealer or investment adviser.[98]

DOL Fiduciary Rule Re-Proposal

On April 14, 2015, the U.S. Department of Labor ("DOL") re-proposed a regulation to define and clarify who would be a fiduciary of an employee

benefit plan under the Employee Retirement Income Security Act of 1974 ("ERISA") as a result of providing investment advice to the plan or its participants or beneficiaries (the "2015 Proposal").[99] The 2015 Proposal would also apply to the fiduciary of a plan under the Internal Revenue Code, including an individual retirement account ("IRA").[100]

If adopted, the 2015 Proposal would affect "a wider array of advice relationships than the existing ERISA and [Internal Revenue] Code regulations, which would be replaced."[101] It would apply the fiduciary standard to any person who provides investment advice or recommendations to an employee benefit plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner under both ERISA and the Internal Revenue Code. A consequence of the 2015 Proposal, then, would be to expand the number and categories of persons who would be considered fiduciaries under ERISA to encompass many broker-dealers, individual investment professionals, and pension consultants not previously subject to ERISA.

Existing Section 3(21)(A) of ERISA currently provides that a person is a fiduciary with respect to an employee benefit plan to the extent that such person (i) exercises any discretionary authority or discretionary control with respect to management of such plan or exercises any authority or control with respect to management or disposition of its assets; (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so; or (iii) has any discretionary authority or discretionary responsibility in the administration of such plan.[102] However, a regulation that DOL issued in 1975 narrowed the scope of the statutory definition of fiduciary investment advice by creating a five-part test to be satisfied before a person can be treated as rendering investment advice for a fee.[103] Under that regulation, advice from a person who is not a fiduciary under another provision of the statute will constitute "investment advice" if that person (1) renders advice as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing or selling securities or other property (2) on a regular basis (3) pursuant to a mutual agreement, arrangement or understanding, with the plan or a plan fiduciary, (4) that the advice will serve as a primary basis for investment decisions with respect to plan assets, and (5) that the advice will be individualized, based on the particular needs of the plan or IRA.[104] To be considered a fiduciary with respect to any particular instance of investment advice under this formulation, a person must satisfy every element of the five-part test with respect to the particular advice recipient or plan at issue.[105]

In 2010, DOL proposed a new regulation designed to replace the five-part test with a different definition of what would constitute fiduciary investment advice for a fee (the "2010 Proposal").[106] The 2010 Proposal also specified carve-outs for types of conduct that would not result in fiduciary status.[107] The 2010 Proposal generated numerous comments and engendered vigorous debate.[108] After considering the comments received, and given the significance of that rulemaking, DOL determined to spend additional time reviewing the proposal and to issue a new proposed regulation for comment.[109]

The recently re-proposed rule—the 2015 Proposal—revises the 2010 Proposal but retains elements of that proposal's framework.[110] The 2015 Proposal expands the definition of fiduciary investment advice but also specifies a series of carve-outs for communications deemed not to be fiduciary in nature.[111] Under the 2015 Proposal definition, a person renders investment advice by (1) providing investment recommendations, investment management recommendations, appraisals of investments, or recommendations of persons to provide investment advice or manage plan assets, and (2) either (a) acknowledging the fiduciary nature of the advice, or (b) acting

pursuant to an agreement, arrangement, or understanding with the advice recipient that the advice is individualized to, or specifically directed to, the recipient for consideration in making investment or management decisions regarding plan assets.[112] Whenever such advice is provided for a fee or other compensation, direct or indirect, the person giving the advice is a fiduciary.[113]

The 2015 Proposal also includes several carve-outs for persons who do not represent that they are acting as ERISA fiduciaries. For example, a fiduciary duty would not be triggered by statements or recommendations made to a "large plan investor with financial expertise" by a counterparty acting in an arms-length transaction, the provision of an appraisal, fairness opinion, or a statement of value to an employee stock ownership plan regarding employer securities, or the provision of information and materials that constitute "investment education" or "retirement education."[114]

More importantly, the 2015 Proposal introduces a new Best Interest Contract Exemption (the "BIC Exemption").[115] The proposed BIC Exemption would condition relief from ERISA's prohibited transaction rules on the express contractual agreement by advisers to employer-sponsored benefit plans and IRAs (and the advisers' employing firms) to be governed by ERISA fiduciary standards. Thus, the proposed BIC Exemption would provide conditional relief for common compensation (for example, commissions and revenue sharing) that an adviser and the adviser's employing firm might receive in connection with investment advice to retail retirement investors.[116] To receive such compensation, the BIC Exemption would require the adviser and the firm to:

> [C]ontractually acknowledge fiduciary status, commit to adhere to basic standards of impartial conduct, adopt policies and procedures reasonably designed to minimize the harmful impact of conflicts of interest, and disclose basic information on their conflicts of interest and on the cost of their advice.[117]

According to the 2015 Proposal, the BIC Exemption is predicated on the adviser and firm's agreement to meet fundamental obligations of fair dealing and fiduciary conduct; in other words, to give advice that is in the customer's best interest, avoid misleading statements, receive "no more than reasonable" compensation, and comply with applicable federal and state laws governing advice.[118] The 2015 proposal states that this "principles-based approach aligns the adviser's interest with those of the plan participant or IRA owner," while "leaving the adviser and employing firm with the flexibility and discretion necessary to determine how best to satisfy these basic standards in light of the unique attributes of their business."[119]

Chair White's Recent Statements

On March 17, 2015, SEC Chair Mary Jo White called for the implementation of a uniform fiduciary standard for broker-dealers and investment advisers under Section 913 of Dodd-Frank.[120] In endorsing a uniform fiduciary standard for broker-dealers and investment advisers, Chair White stated that such a rulemaking should be a principles-based standard rooted in the current fiduciary standard for investment advisers.[121]

At the same time, Chair White acknowledged that there were complexities and challenges that accompany such a rulemaking.[122] In particular, Chair White identified three issues surrounding such a rulemaking—how to define the standard, what would be required under that standard, and how to ensure compliance and enforcement of that standard.[123]

U.S. Supreme Court Decision—*Tibble v. Edison Int'l*

On May 18, 2015, the U.S. Supreme Court handed down a unanimous decision in *Tibble v. Edison Int'l*, 135 S.Ct. 1823 (2015). Although the Court's

holding in *Tibble* strictly concerned the timeliness of a complaint, the Court took the opportunity in the case to interpret the nature of the fiduciary duty under ERISA. *Id.* at 1828. The Court found, among other things, that "ERISA's fiduciary duty is 'derived from the common law of trusts'" and that, under trust law, "a trustee has a continuing duty to monitor trust investments and remove imprudent ones." *Id.* at 1828 (quoting *Cent. States, Se. & Sw. Areas Cent. Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985)). According to the Court, this "continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset." *Id.* Therefore, a "plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones." *Id.* at 1829.

In *Tibble*, the beneficiaries of a defined contribution retirement savings plan (the "Plan") brought an ERISA action against the fiduciaries of the Plan to recover damages for alleged losses suffered by the Plan from alleged breaches of respondents' fiduciary duties. *Id.* at 1824. At issue, among other things, was how respondents (the alleged fiduciaries) could have been considered to have acted prudently in offering six higher priced retail-class mutual funds as Plan investments when respondents could have offered effectively the same six mutual funds at a lower price offered to institutional investors. *Id.*

In finding that a fiduciary has a "continuing duty of some kind to monitor investments and remove imprudent ones," the Court in *Tibble* drew from trust law. *Id.* at 1828. Quoting the Restatement (Third) of Trusts, the Court observed that a "trustee's duties apply not only in making investments but also in monitoring and reviewing investments, which is to be done in a manner that is reasonable and appropriate to the particular investments, courses of action, and strategies involved." *Id.* (quoting Restatement (Third) of Trusts, § 90, cmt b (2007)).

Objectives of the Investor Advocate with Respect to Fiduciary Duty

In light of Chair White's remarks and the recent activity by DOL, the Office of the Investor Advocate will endeavor to provide a voice for investors as this important issue is addressed by policymakers. For the Commission, it will be especially challenging to reconcile what appear to be contradictory mandates under Section 913 of the Dodd-Frank Act—to develop a standard for broker-dealers no less stringent than the existing standard for investment advisers, while accommodating sales-based compensation and the sale of proprietary products or limited product lines. Section 913 also prohibits the SEC from requiring a broker-dealer to have a continuing duty of care or loyalty to the customer after providing personalized investment advice. This limitation could lead to a duty for broker-dealers that is less rigorous than the continuing duty applied to ERISA advisers under *Tibble*.

In at least two significant ways, an ill-advised SEC rule could be worse than no rule at all. First, a rule could dilute the existing standard for investment advisers in an attempt to adopt a "harmonized" standard for broker-dealers. Second, even though this effort is intended to reduce investor confusion about the differing standards of care for investment advisers and broker-dealers, a poorly-designed rule could create even worse confusion by purporting to give investors the protection of a "fiduciary duty" that is, in fact, less stringent than the traditional fiduciary duty that applies in other relationships of trust. We will fight to avoid these outcomes and to encourage rulemakings that are as strong as possible for investors.

DISCLOSURE

Disclosure is at the very heart of our system of securities regulation in the United States. The Commission is working on a number of disclosure-related initiatives, as described below. In Fiscal Year 2016, the Office of the Investor Advocate will work alongside others at the Commission to improve

disclosure to investors in a wide variety of contexts. In doing so, we will seek input from users of data and communicate their needs to policymakers.

Investment Company Reporting Modernization

On May 20, 2015, the Commission proposed amendments to its rules and forms to modernize the reporting and disclosure of information by registered investment companies ("funds").[124] As the primary regulator of the asset management industry, the Commission relies on information included in reports filed by funds and investment advisers for a number of purposes, including monitoring industry trends, informing policy and rulemaking, identifying risks, and assisting Commission staff in examination and enforcement efforts.[125] As assets under management and complexity in the industry have grown over the years, so too has the volume and complexity of information that the Commission must analyze to carry out its regulatory duties.[126]

For example, Commission staff estimates that there were approximately 16,619 funds registered with the Commission as of December 2014.[127] Commission staff also estimates that there were approximately 11,500 investment advisers registered with the Commission, along with another 2,845 advisers that file reports with the Commission as exempt reporting advisers, as of January 2015.[128] Moreover, at year-end 2014, fund assets exceeded $18 trillion, having grown from approximately $4.7 trillion at the end of 1997.[129] Meanwhile, the fund industry has developed new product structures and new fund types, as well as increased its use of derivatives and other alternative strategies.[130] Although these new products and strategies can offer greater opportunities for investors to achieve their investment goals, they can also add complexity to funds' investment strategies, amplify investment risk, or expose investors to other risks, such as counterparty credit risk.[131]

In addition, there has been a significant increase in the use of the Internet as a tool for disseminating information, and new technology can be utilized to report and analyze information.[132] In response to these developments, the Commission generally has allowed the use of the Internet as a platform for providing required disclosure to investors.[133] The Commission has also started to use structured and interactive data formats to collect, aggregate, and analyze data reported by registrants and other filers.[134] These data formats have enabled the Commission and other data users, including investors and their intermediaries, to better collect and analyze reported information.[135]

Amid these industry changes and technological advances, the Commission recognized a need to improve the type and format of the information that funds provide to the Commission and to investors.[136] The Commission also recognized the need to improve its monitoring of the fund industry.[137] Accordingly, the Commission has proposed a set of reporting and disclosure reforms designed to take advantage of the benefits of advanced technology and to modernize the fund reporting regime.[138] The proposed reforms seek to increase the transparency of fund portfolios and investment practices to the Commission and to investors by taking advantage of technological advances.[139] We will review the comments filed in response to the Commission's proposal to modernize and enhance reporting by investment companies, and we will encourage the Commission to move forward with the adoption of a strong final rule.

Variable Annuity Disclosure

Commission staff have also been considering potential reforms to variable annuity disclosure.[140] For example, staff have been considering whether to recommend that the Commission require key information to be disclosed to new investors in a standardized order.[141] In addition, staff have been considering the utility of tailoring disclosure for existing investors making additional purchase

payments."[142] We agree with staff that the mutual fund summary prospectus could serve as a useful model for providing variable annuity disclosure.[143] We strongly support staff's efforts to address the problem of lengthy and complex disclosure for each variable annuity in a manner "that will tell the full story—the key facts that investors need to know about the risks and costs, as well as the benefits, of their investment."[144]

Disclosure Effectiveness

As described in last June's Report on Objectives, in the offer or sale of securities, all material facts must be disclosed to investors so they can make fully informed investment decisions. Enforcing these disclosure requirements is a critical element of investor protection. Ideally, issuers and sellers of securities should provide information to investors in a manner that enhances investors' ability to understand it. Full and accurate information should be provided in a meaningful way, without unnecessary repetition and without burying important information within less important disclosures.

We recognize and commend the Commission on the steps it has taken in recent years towards making disclosures more effective. For example, in 2009, the Commission began requiring companies to provide financial statements using eXtensible Business Reporting Language (XBRL).[145] XBRL is present in over twenty Commission forms and, through rulemaking, the Commission continues to expand the use of structured data.[146] Further, the Commission recently began compiling and posting structured data for use by investors and academics, and the Commission is working to develop "Inline XBRL" to integrate XBRL tagging directly into HTML formatted documents.[147]

In December 2013, the Commission issued the Report on Review of Disclosure Requirements in Regulation S-K (the "S-K Report"), a report mandated by Congress under the Jumpstart Our Business Startups Act (the "JOBS Act").[148] The S-K Report describes the evolution of the disclosure

requirements within Regulation S-K and recommends a reevaluation of those disclosure requirements. The S-K Report recommends potential issues for further study and identifies specific areas of Regulation S-K that may benefit from further review.

On April 11, 2014, the SEC's Division of Corporation Finance announced a disclosure reform initiative that builds upon the S-K Report.[149] The initiative will begin with a review of the business and financial disclosures that are reflected in periodic or current reports (Forms 10-K, 10-Q, and 8-K). Commission staff will determine whether the requirements of Regulations S-K and S-X can be updated to reduce the costs and burdens to issuers while continuing to provide material information and eliminate duplicative disclosures. In the future, Commission staff will also consider ways to update and modernize disclosures that form the basis for most proxy disclosure.

Because these disclosure rules are so important to investors, we will continue to focus our efforts and resources on disclosure effectiveness in Fiscal Year 2016. We will not only continue to

assist the Division of Corporation Finance and others in the exploration of potential changes to the content of disclosure, but we will also advocate for further enhancements to the means of disclosure. We believe the means of disclosure is almost as important as the content, and that disclosure systems need to be modernized to achieve greater efficiency, accessibility, and usefulness. More specifically, we believe that data should be layered for the individual investor and structured for the analyst.[150] Therefore, we will continue to encourage Commission staff to pursue the utilization of technology that can be used to make information more accessible and useful for investors. Additionally, to the extent that legislation is proposed or required to improve disclosures and practices, we may make recommendations to Congress as appropriate.

MILLENNIALS

The precise definition of "Millennials," also known as "Generation Y" or "Echo Boomers," varies from one source to another—in fact, there is no strong consensus about how to define Millennials.[151] For example, William Strauss and Neil Howe, authors who are credited with coining the term "Millennial," defined the generation as consisting of those individuals born between 1982 and 2004.[152] The Council of Economic Advisers, on the other hand, defines Millennials as those "born between 1980 and the mid-2000s."[153] The Pew Research Center generally defines Millennials as those born between 1981 and 1997,[154] and the 2012 National Financial Capability Study uses the span from 1978 to 1994.[155]

For our purposes, a precise definition is not necessary. Using any of these definitions, the first of the Millennials are in their thirties, and many of them are at the beginning of their careers.[156] This generation is likely to be a force in the U.S. economy for decades to come.[157] In a 2012 study by consulting firm Accenture, it is estimated that approximately $30 trillion in financial and non-financial assets is set to transfer from North American "Baby Boomers" to their heirs, namely, "Generation X" and Millennials, with the peak transfer of wealth projected to occur between 2031 and 2045.[158]

Millennials differ from previous generations and have been defined by the characteristics of the country they grew up in.[159] They have seen increased racial diversity, climbing costs of higher education, and defining events such as the terrorist attacks of September 11, 2001.[160] Millennials are the most educated generation[161] and they have been shaped by technology, with much of the technological innovation coinciding with their childhood.[162] They have had unparalleled access to information and computational power because they have come of age at a time when the "frontiers of technology have appeared unlimited" and the cost of creating and distributing digital content fell drastically.[163] This has not only created opportunity for entrepreneurship and increased computer processing power; it has changed the way Millennials do many things.[164] Millennials have become accustomed to using technology in every aspect of life.[165] They take advantage of high-tech tools, social networking platforms, websites, and mobile applications to do many things, including pick stocks and find financial planners.[166] Importantly, Millennials have also wrestled with financial challenges stemming from the Great Recession early on in their career paths, and they continue to negotiate a post-recession economy.[167]

In the coming fiscal year, we will examine economic issues germane to Millennials in greater depth. We will, among other things, evaluate their financial literacy, the manner and extent in which they participate in financial markets, and the differences between Millennials and preceding generations. We will also consider whether proposed changes to laws, policies, and regulations are forward-looking and anticipate the needs of a new generation of investors.

RETIREMENT READINESS

According to the Census Bureau, the age 65-and-older demographic in the United States is likely to increase by more than 50 percent—to approximately 74 million—between 2015 and 2030.[168] Based on current trends, this age group will likely represent more than 20 percent of the total U.S. population by 2030.[169] This development promises to have a significant and wide-ranging impact on a number of policy areas in the years ahead.

One of those policy areas is Americans' level of retirement readiness. Currently, there is no clear consensus regarding whether or not Americans are adequately prepared for retirement. Various studies and surveys offer "mixed evidence" about the adequacy of retirement savings.[170] These studies "range widely in their conclusions about the degree to which Americans are likely to maintain their pre-retirement standard of living in retirement, largely because of different assumptions about how much income this goal requires."[171]

For example, a recent Gallup survey found that "[m]ost U.S. investors are generally confident that they are financially prepared for retirement, including 88% of retired investors and 76% of nonretired investors."[172] These survey results are echoed by some commentators who question the notion that Americans are not saving enough for retirement.[173] Their findings would tend to support the contention that Americans at least believe that they are adequately prepared for retirement.[174]

On the other hand, a Federal Reserve report on the economic well-being of U.S. households in 2014 found, among other things, that 39 percent of non-retirees "have given little or no thought to financial planning for retirement and 31 percent have no retirement savings or pension."[175] According to the report, more than one-half of non-retirees with self-directed retirement accounts are either "not confident" or "slightly confident" in their ability to make the right investment decisions when investing the money in such accounts.[176]

A recent study by the U.S. Government Accountability Office (the "GAO Retirement Study") found that 52 percent of households age 55-and-older have no retirement savings in a defined contribution plan or individual retirement account, and nearly 30 percent of households age 55-and-older have no retirement savings and no defined benefit (e.g., pension) plan.[177] Moreover, according to the study, Social Security furnishes most of the retirement income for approximately half of households age 65-and-older.[178] It is findings like these that prompt some to warn of a "retirement crisis" and to caution that "millions of Americans may be forced to muddle through their final years partially dependent on others for financial support and to accept a standard of living significantly below that which they had envisioned."[179]

The Center for Retirement Research at Boston College ("Boston College") asserts that "about half of working-age households are 'at risk' of being unable to maintain their pre-retirement standard of living in retirement."[180] The reasons for this, according to Boston College, include: (1) increased life expectancy; (2) declining Social Security replacement rates; (3) the shift in employer retirement plans from defined benefit to defined contribution plans; (4) increased out-of-pocket health care costs for retirees; and (5) the substantial decline in real interest rates since 1983.[181] As a result, "baby boomers—and those who follow—will need more retirement income, but will receive less support from the traditional sources of Social Security and employer defined benefit plans."[182] Therefore, concludes Boston College, "retirees need a much bigger nest egg than in the past to generate a given amount of income."[183]

Pivotal to the retirement readiness debate is the projected percentage of income required to be replaced during retirement. Income in retirement may come from several different sources, including Social Security, pension plan income, retirement plan savings (e.g., 401(k)s or IRAs), non-retirement

savings such as home equity, and wages.[184] Adequate retirement income has been defined as "an income that allows retirees to maintain their pre-retirement standard of living."[185]

Yet, there is no consensus on how much income would be adequate to maintain a retiree's pre-retirement standard of living.[186] Experts generally agree that many retirees do not need to replace 100 percent of working income to maintain their standard of living because most retirees likely have reduced expenses as compared to when they were working.[187] The GAO Retirement Study concluded that identifying a specific target for the replacement rate (i.e., a household's post-retirement income as a percentage of pre-retirement) would require numerous complicated assumptions.[188] Moreover, the GAO Retirement Study observed, different studies use different replacement rates or other benchmarks to measure retirement income adequacy.[189]

For example, the National Institute on Retirement Security ("NIRS") posits that, "[t]o maintain its standard of living in retirement, the typical working American household needs to replace roughly 85 percent of pre-retirement income" or eight times income at age 67.[190] Although an 85 percent income replacement rate "may seem high," NIRS contends that the rate "does not fully account for medical costs which can escalate rapidly during retirement."[191] Nonetheless, even those who support NIRS's position concede that the 85 percent replacement rate generally is regarded as being "at the high end of standard replacement rate recommendations."[192] By comparison, the GAO Retirement Study cites a 2012 Urban Institute study that sets a 75 percent replacement rate target, but measures retirement income at age 70.[193] Ratcheting down the replacement rate further, the Social Security Administration states that "Social Security replaces about 40 percent of an average wage earner's income after retiring, and most financial advisors say retirees will need 70 percent or more of pre-retirement earnings to live comfortably."[194] Yet, detractors argue that even that 70 percent figure is misleading.[195] Boston College divides its retirement adequacy benchmark into tiers, estimating a 69 percent replacement rate for the highest-third of income earners, 72 percent for the middle third, and 79% for the lowest tier.[196] Generally, those who argue that there is no retirement crisis tend not to identify a specific retirement adequacy benchmark.[197]

To the extent that Americans are not adequately prepared for retirement, Boston College makes the following recommendations:

- **Work longer.** Delaying retirement can increase an individual's Social Security income by 7-8 percent for each year of delay, allow individuals to contribute to their employer-sponsored retirement plan for a longer period, and decrease the length of retirement over which an individual would need to stretch retirement funds.[198]
- **Save more.** Retirement nest eggs could be enhanced by making employer-sponsored retirement plans fully automatic (by enrolling all workers automatically into such plans, setting default contribution rates, and enrolling them into acceptable default investment options like target-date funds), and covering those employees who are not enrolled in an employer-sponsored retirement plan.[199]
- **Consider home equity.** Extra retirement income could be generated through downsizing or by taking out a reverse mortgage.[200]

Whether or not there is a retirement crisis, the challenge of increasing savings is not new, and the concept of making employer-sponsored retirement plans "automatic" has gained traction. According to one study, the median amount that middle-class Americans have saved for retirement is $20,000, and half of those aged 50-75 have saved less than $25,000.[201] This suggests that many Americans find saving for retirement more difficult than expected.[202] To address issues like these, as well

as employee inertia, Congress enacted the Pension Protection Act in 2006 (the "PPA").[203] Very generally, the PPA gives 401(k) plan sponsors and employers a "safe harbor" from fiduciary liability if they offer to employees a retirement plan with the following "automatic" features:

- Automatic enrollment of employees in a 401(k) plan that would enroll employees at a default savings contribution rate (e.g., 3 percent of salary), but would permit employees to opt out affirmatively.[204]
- Automatic enrollment into default investments, known as Qualified Default Investment Alternatives,[205] some of which would automatically invest employee contributions in "approved" investment vehicles, such as target date funds.[206]
- Automatic escalation to increase employee contributions to their 401(k) accounts periodically.[207]

Given the lack of consensus regarding the subject of retirement readiness, we believe that this area of inquiry would benefit from further objective study. If the research demonstrates that Americans generally are prepared for retirement, then no further action may be required. But if the data lead to the opposite conclusion—that Americans are, in fact, unprepared for retirement—we will consider potential policy approaches to address the problem.

SHAREHOLDER RIGHTS AND CORPORATE GOVERNANCE

In the coming year, we will consider issues involving shareholder rights and corporate governance. In particular, we will focus upon the rules governing shareholder proposals and the proxy voting process.

As a partial owner of the company, a shareholder has a right to vote on certain issues affecting the management of the company.[208] This includes the right to participate in the election of persons to serve on the company's board of directors.[209] In addition, Exchange Act Rule 14a-8 gives certain shareholders the ability to submit a proposal for a vote of the other shareholders that, if approved, would recommend or require that the company take a certain course of action.[210]

Shareholder votes are typically held during an annual shareholder meeting.[211] However, because it may be inconvenient for shareholders to attend the meeting in person, state law generally provides a mechanism for shareholders to cast votes by proxy.[212] The overwhelming majority of votes typically are cast in this manner, so the rules governing the proxy process are of great importance to investors.

Election of Directors

In a contested board election, a slate of candidates backed by the company's current management is challenged by a slate of candidates backed by one or more shareholder proponents.[213] Shareholders voting in person are able to choose from among candidates on both slates.[214] Shareholders voting by proxy, however, generally must vote for candidates either on one slate or the other, with no ability to mix and match from among candidates on both slates.[215] This result flows from what one SEC Commissioner Kara Stein has described as "the strange confluence of federal and state law."[216]

In practice, proxies (including both management and dissidents' proxies in contested elections) typically state that any new proxy will revoke any previously granted proxy. As a result, if a shareholder submits more than one proxy, only the last proxy is given effect. This precludes a shareholder from voting for certain nominees from the management proxy card and other nominees from the dissident proxy card. Moreover, shareholders generally are not permitted to write-in the names of candidates on a ballot.[217] Thus, shareholders voting by proxy may choose candidates from both slates only if the names of nominees from the opposing slates appear on one "universal" proxy ballot.[218]

Currently, federal law does not provide for such a universal ballot. Under what is called the bona fide nominee rule, a proxy card can list only the names of those director nominees who have consented to having their names appear on that particular proxy card and who have agreed to serve if elected.[219] In practice, candidates typically, though not always, withhold consent for their names to appear on the competing proxy card.

To address this issue, some advocates have called for the Commission to engage in rulemaking to facilitate universal proxies in which all candidates would appear on a single ballot.[220] This would eliminate a significant difference between voting by proxy and voting in person at the shareholder meeting.[221] In addition, a universal proxy could enhance shareholder voting by giving shareholders the opportunity to select those candidates they believe are best qualified, no matter on which side of the contest those candidates may have been positioned.[222] Critics, meanwhile, assert that a universal ballot would further empower activist shareholders, increase the number of proxy contests, exacerbate "short-termism," and result in a negative impact on boardroom focus and dynamics.[223]

This issue has gained increasing attention in the past two years.[224] In 2013, the Investor Advisory Committee recommended that the Commission explore changes to the proxy rules that would give proxy contestants the option, but not the obligation, to use universal ballots in connection with short slate director nominations.[225] In a short slate, the dissident seeks a minority of board seats rather than control of the board.[226] In January 2014, the Council of Institutional Investors submitted a rulemaking petition requesting that the Commission facilitate the use of universal proxy cards in contested elections.[227] Most recently, in February 2015, the Commission held a Proxy Voting Roundtable devoted, in part, to the consideration of a universal ballot.[228]

During Fiscal Year 2016, we will study this issue and related proxy voting issues in greater depth, review real-world application of the existing proxy rules, and monitor relevant developments at the Commission. We will look for ways to enhance the fairness, efficiency, and utilization of the proxy voting process.

Shareholder Proposals

Exchange Act Rule 14a-8 allows a shareholder who holds voting shares worth at least $2,000 (or one percent of the voting shares, whichever is less) to submit a proposal for a vote of the other shareholders.[229] The proposal may recommend or require the company to take a certain course of action.[230] The company is required to include such a proposal in the company's proxy materials for a vote at a shareholder meeting unless the company can exclude the proposal under certain procedural and substantive exceptions set forth in the rule.[231] One of those grounds for exclusion, found in Exchange Act Rule 14a-8(i)(9), allows a company to exclude a shareholder proposal that "directly conflicts" with one of the company's own proposals.[232]

Every year, Commission staff receive approximately 300 to 400 requests for assurance that the Commission will take no enforcement action against a company if the company were to exclude a shareholder proposal under one of the exceptions in Rule 14a-8.[233] For example, in 2014, Whole Foods, Inc. ("Whole Foods") sought such an assurance, called a "no-action letter," from the Commission.[234] Whole Foods requested the no-action letter because a shareholder of Whole Foods had submitted a proposal asking the Whole Foods board to adopt a form of proxy access that would have permitted a shareholder or group of shareholders (who held at least three percent of the outstanding stock for at least three years) to nominate up to 20 percent of the directors, but no fewer than two, for inclusion in the company's own proxy statement.[235] The company responded that it intended to include its own proposal asking

shareholders to approve a board-adopted bylaw that granted any single shareholder (who held at least nine percent of the outstanding stock for at least five years) to nominate for inclusion in the company proxy statement 10 percent of the directors, but no fewer than one.[236]

Citing Rule 14a-8(i)(9), the company contended in its request to the Commission that it was authorized to exclude the shareholder proposal from its proxy materials on the grounds that the shareholder proposal directly conflicted with the company's own proposal.[237] Subsequently, in December 2014, the Division of Corporation Finance issued the requested no-action letter.[238] The shareholder proponent then requested either Division reconsideration or Commission review of the matter.[239]

On January 16, 2015, Chair White directed the Division to review the proper scope and application of Rule 14a-8(i)(9).[240] In light of the pending review, the Division withdrew the Whole Foods no-action letter and stated that it would not express a view on any no-action requests submitted in reliance upon that provision during the recent proxy season.[241]

In the coming months, we will monitor the staff's review of Rule 14a-8(i)(9) and, in particular, their interpretation of the term "directly conflicts." We will also review other grounds for exclusion under Rule 14a-8. We will advocate for a fair application of the law and, if necessary, for modifications to the existing regulation.

FINANCIAL REPORTING AND AUDITING

High-quality financial reporting is critically important to investors. Understanding a company's true financial condition and results is indispensable in making investment and voting decisions. Indeed, our overall system of financial disclosures and controls constitutes a significant reason why investors are willing to place their trust and confidence in the U.S. financial markets. Thus, it is important for the Office of the Investor Advocate to track potential changes involving accounting, auditing, and related issues, and to give a voice to the needs of investors in the policymaking process.

In the coming fiscal year, we will be monitoring a number of discrete issues, but we will primarily focus on two broad topics. The first involves the convergence of global accounting standards in general, and of U.S. Generally Accepted Accounting Principles ("GAAP") and International Financial Reporting Standards ("IFRS") in particular. The second involves proposed new disclosures by audit committees and auditors. Because financial information is a significant part of the disclosure regime under Regulation S-X and S-K, our consideration of these issues will complement our efforts to promote more effective disclosure under those regulations, as discussed above.

Financial Standards

Since 2002, the Financial Accounting Standards Board and the International Accounting Standards Board have been working to develop a single set "of high-quality, compatible accounting standards that could be used for both domestic and cross-border financial reporting."[242] In 2010, the Commission expressed its support for this goal.[243] More recently, Chair White has asked the SEC's Chief Accountant to recommend what action, if any, the Commission should take regarding the further incorporation of IFRS into the U.S. capital markets. [244]

The SEC's Chief Accountant, James Schnurr, has made this a priority. His staff is currently developing a recommendation which he expects to present to the Chair in the near term.[245] Mr. Schnurr has also mentioned one potential alternative—i.e., allowing domestic issuers to provide IFRS-based information as a supplement to U.S. GAAP financial statements without requiring reconciliation.[246] Since 2007, the SEC has permitted foreign private issuers to report

under IFRS without requiring reconciliation to U.S. GAAP.[247] Today, more than 500 foreign companies representing trillions of dollars in aggregate market capitalization report to the SEC under IFRS with no reconciliation.[248]

As we continue to monitor developments in this area, we will work to help ensure that investor confidence is not undermined by undue erosions of financial standards. We are also sensitive to the necessity of having comparable financial information in an increasingly international marketplace.

Auditing

Recent attention has focused on disclosures made by the audit committee of a company's board of directors, which oversees a company's financial reporting and its outside audit and thus plays a critical role in our financial reporting framework. Chair White has asked Commission staff to examine the existing audit committee report to make it more useful to investors, noting that investors have expressed interest in increased transparency into the audit committee's activities.[249]

Indeed, in recent years, investors and others have focused on enhancements to audit committee reports of public companies. In 2013, several governance organizations jointly issued a call to action to enhance the reports.[250] The organizations observed that "[i]nvestors, too, are increasing their focus on the activities and transparency of audit committees, particularly as those activities relate to enhanced audit quality through oversight of the independent external auditor."[251] They noted that some investors were seeking greater disclosure from audit committees concerning the appointment and oversight of the external auditor, audit firm tenure, audit firm fee determinations, and audit committee involvement in the selection of the audit engagement partner.[252] Other jurisdictions, such as the United Kingdom, have already adopted enhanced disclosures of the audit committee.

On June 5, 2015, SEC Chief Accountant Schnurr announced that his office was developing a concept release on audit committee disclosures.[253] He stated that he expected to recommend Commission approval of the release in the near future.[254] According to Mr. Schnurr, the concept release will seek feedback on how investors currently use the information provided in audit committee disclosures, as well as feedback on the usefulness of potential enhancements, including additional disclosures.[255] Noting the significance of the audit committee's oversight of the external auditor, he expressed particular interest in learning more from investors, audit committees, auditors, and others regarding current audit committee disclosures related to oversight of the independent auditor.[256] Mr. Schnurr also stated that the staff was considering current trends, including disclosures by many companies and their audit committees that go beyond what is required by current rules.[257]

If the Commission issues a concept release on audit committee disclosures, the Office of the Investor Advocate will review the comments, interact with a variety of stakeholders, and evaluate the impact that proposed changes would have on investors.

OMBUDSMAN'S REPORT

APPOINTMENT OF SEC OMBUDSMAN AND FOUNDATIONAL ACTIVITIES

The Investor Advocate is responsible for appointing an Ombudsman to: (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with SROs; (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between investors and the Ombudsman.[258]

On August 26, 2014, the Investor Advocate, in consultation with Chair White, appointed Tracey L. McNeil as Ombudsman. She formally began her duties on September 22, 2014, and since that time, the Ombudsman's activities have focused largely on establishing processes to handle inquiries from retail investors. These foundational activities include the following:

- Meeting with SEC staff, formally and on an as-needed basis, to raise their awareness of the roles and responsibilities of the Ombudsman;
- Drafting internal policies and procedures, and establishing internal protocols for handling inquiries;
- Routing certain inquiries to the appropriate SEC divisions and offices;
- Establishing an external Ombudsman email address. Since the email address was established in October 2014, the Ombudsman has received and responded to 170 email inquiries;
- Establishing dedicated Ombudsman telephone lines. Since the direct and toll-free telephone lines were established in November 2014, the Ombudsman has received 155 initial phone calls from retail investors and interested parties;
- Convening meetings with the SEC's Office of Information Technology to develop a platform for inquiry management, data collection, and reporting;
- Meeting with other SEC divisions and offices, and ombudsmen and staff from other agencies and entities, to discuss data tracking systems;
- Meeting with ombudsmen from other federal agencies to discuss best practices and to share information on topical issues of importance;
- Meeting with ombudsmen and staff from other agencies and entities to discuss staffing and office structure;

- Developing a strategy to market the ombudsman role once additional staff are on board;
- Completing ombudsman coursework with the International Ombudsman Association; and,
- Meeting with certain SEC and SRO directors and senior staff to discuss methods and protocols for collaboration when inquiries received by the Ombudsman necessitate their involvement.

ASSISTING RETAIL INVESTORS AND OTHER INTERESTED PERSONS

The Ombudsman currently assists retail investors and other interested persons in a variety of ways, including, but not limited to:

- Listening to inquiries, complaints, and related issues;
- Helping persons explore available SEC options and resources;
- Clarifying certain SEC decisions, policies, and practices;
- Taking objective measures to informally resolve matters that fall outside of the established resolution channels and procedures at the SEC; and,
- Acting as an alternate channel of communication between retail investors and the SEC.

The Ombudsman is required to review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate relating to securities laws. The establishment of the role, the Ombudsman's ability to handle inquiries on a confidential basis, and the Ombudsman's access to appropriate SEC staff across the agency should encourage persons to present questions to both the Ombudsman and the Investor Advocate. As the role is further established and additional staff come on board, the Ombudsman will develop specific outreach initiatives to further publicize the role and the resources available at the SEC and to encourage persons to interact with the Office of the Investor Advocate.

STANDARDS OF PRACTICE

Any retail investor with an issue or concern related to the SEC or to a self-regulatory organization that is under SEC oversight may contact the Ombudsman. The Ombudsman may assist in identifying available SEC options and resources that may help resolve the issue or concern, as the agency has several channels and procedures in place for solving problems, resolving disputes, handling inquiries, and addressing concerns. Similar to the ombudsmen at other federal agencies,[259] the Ombudsman follows three core standards of practice:

CONFIDENTIALITY. The Ombudsman has established safeguards to protect confidentiality, including a separate email address, dedicated telephone and fax lines, and secure file storage. The Ombudsman will not disclose information provided by a person in confidence, including identity, unless expressly authorized by the person to do so, or if required by law or other exigent circumstances, such as a threat of imminent risk or serious harm. At times, the Ombudsman may need to disclose information on a limited basis to other SEC staff to address inquiries and related issues. In these instances, information is only shared to the extent necessary to route and review the matter.

IMPARTIALITY. The Ombudsman does not represent or act as an advocate for any individual or entity, and does not take sides on any issues brought to her attention. The Ombudsman maintains a neutral position, considers the interests and concerns of all involved parties, and works to promote a fair process.

INDEPENDENCE. By statute, the Ombudsman reports directly to the Investor Advocate, who reports directly to the Chair of the SEC. However, the Office of the Investor Advocate and the Ombudsman are designed to remain somewhat independent from the rest of the SEC. Through the Congressional report filed every six months by the Investor Advocate (including the instant Report on

Objectives), the Ombudsman reports directly to Congress without any prior review or comment by the Commission.

INQUIRY MANAGEMENT SYSTEM

During the second quarter of Fiscal Year 2015, the Ombudsman began meeting with the SEC's Office of Information Technology (OIT) to discuss the development of an inquiry management system. The system will be a customer-facing application which will collect and record inquiries, as well as track and report related actions. The system will leverage the Salesforce technology platform and will replace the manual data collection process that is currently in use.

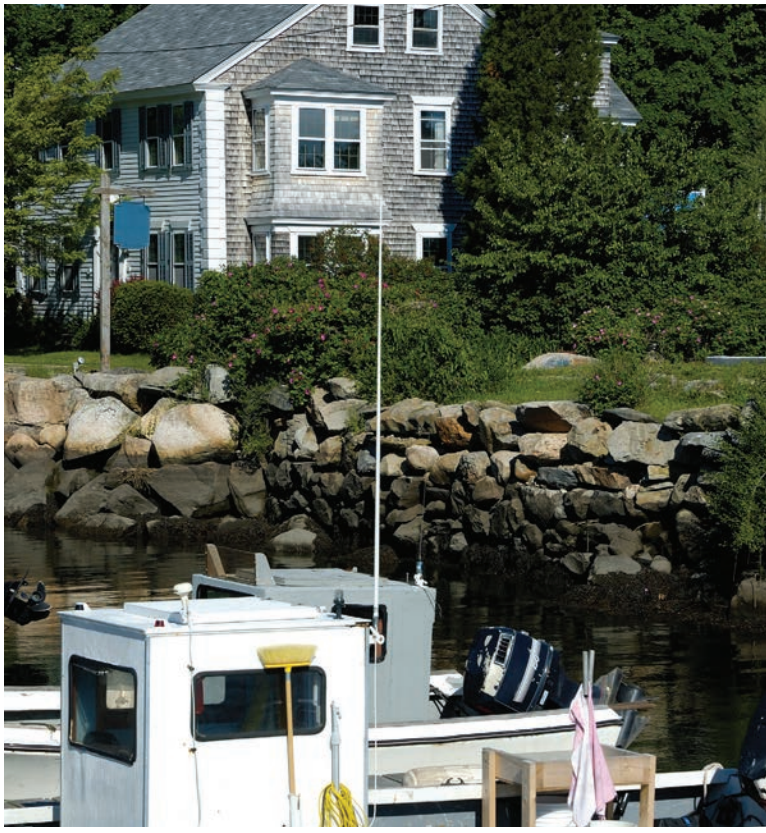
The development acquisition process started in the third quarter of Fiscal Year 2015, and a contract is expected to be in place and awarded by July 2015. The full software development lifecycle process will be followed for this effort, ensuring compliance with SEC and OIT development, security, and privacy guidelines and standards. OIT is planning a 7 to 8 month delivery schedule, with an expected product in place no later than the second quarter of Fiscal Year 2016.

On May 18, 2015, the Ombudsman selected an attorney to assist with fulfilling the duties of the office. Initially, the attorney will work closely with OIT to complete the development and testing phases of the inquiry management system, as the attorney has extensive experience with similar customer-facing systems currently in use at the SEC.

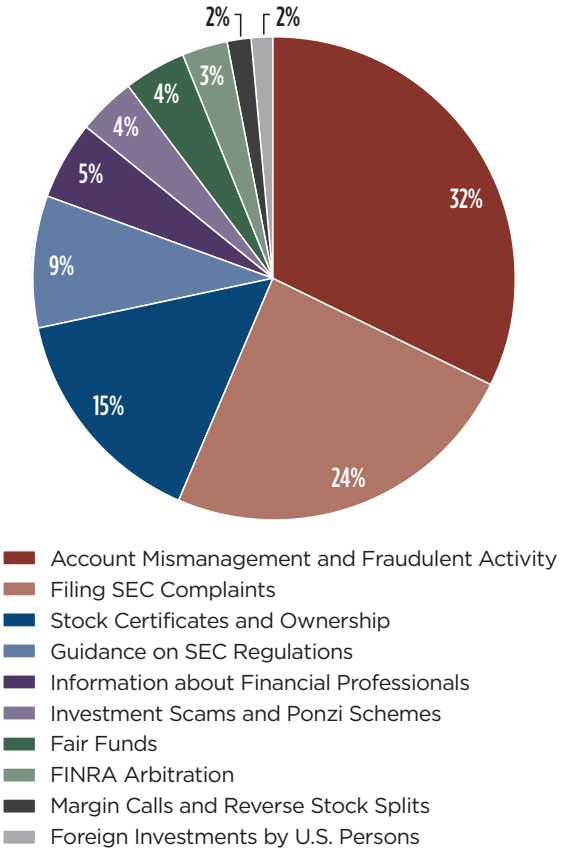
Once the inquiry management system is in place, the Ombudsman and approved staff will have the ability to review investor inquiries, including communication, handling, and resolution histories, within the system. This is expected to result in improved service to retail investors, as the system should reduce inquiry response times and allow for improved data collection, analysis, and reporting. The data collection, analysis, and reporting features of the system will also support recommendations made by the Ombudsman to the Investor Advocate, and will provide enhanced measures to ensure the confidentiality of communications between retail investors and the Ombudsman.

INQUIRY STATISTICS

The Ombudsman began receiving inquiries from retail investors a few days before formally beginning her duties on September 22, 2014. Since that time, when an inquiry is received, the Ombudsman may correspond with the person to learn more about his or her specific issue, conduct additional research and review related laws and policies, confer with other SEC staff as necessary, and recommend the use of existing SEC channels with a goal of reaching a resolution. When these actions are not satisfactory to the individual, the Ombudsman may further discuss the issue with the individual and SEC staff as necessary, and suggest recommendations for additional action.



Of the 330 emails, telephone calls, and hard copy correspondence received by the Ombudsman, 97% came from retail investors. The remaining eight inquiries came from Congress on behalf of constituents, law firms, and from other SEC divisions and offices. Email and telephone inquiries comprised 52% and 47% of the inquiries received, respectively. The majority of the inquiries received fell into 10 primary categories:



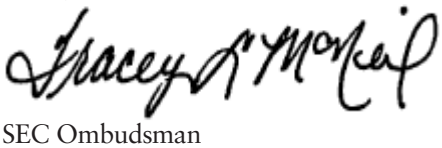
RECOMMENDATIONS AND OUTLOOK

The Ombudsman will continue to track primary inquiry categories to further identify trends and issues, and to identify areas of focus for outreach activities. With the additional staff coming on board, and the expanded capability to analyze additional data through the inquiry management system, the Ombudsman expects to conduct systemic reviews and make recommendations to the Investor Advocate based on this expanded data collection and analysis.

One issue that the Ombudsman will begin to focus on immediately is investor inquiries surrounding the FINRA arbitration process. While the number of inquiries received were low compared to other categories, several investors raised questions about the impartiality of arbitrators. They also voiced concerns about the treatment of investors and the amounts recovered by investors during the mandatory arbitration process.

As an ongoing series of recommendations, the Ombudsman will continue to closely monitor general inquiries by investors relating to clarification of the roles of the various SEC divisions and offices, the use of established SEC resolution channels, and the specific ways the Ombudsman is able to assist investors. Many of these inquiries and issues are expected to be addressed by the enhanced agency and external outreach efforts the Ombudsman will implement in the coming months, and the Ombudsman expects to report favorably on those efforts and initiatives in the next report.

Tracey L. McNeil



SEC Ombudsman

SUMMARY OF IAC RECOMMENDATIONS AND SEC RESPONSES

Investor Advisory Committee. Front row from left to right: Hester Peirce; Joseph V. Carcello; Ann Yerger; Jean Setzfand; Darcy Bradbury; Craig Goettsch; Adam Kanzer. Back row from left to right: Rick Fleming; Alan Schnitzer; Kurt Schacht; Barbara Roper; Roger Ganser; Stephen Holmes; Steven Wallman; Damon Silvers. (Not pictured: J. Robert Brown, Jr.; Eugene Duffy; James Glassman; Joseph Grundfest; Roy Katzovicz; and Anne Sheehan).

Congress established the Investor Advisory Committee to advise and consult with the Commission on regulatory priorities, initiatives to protect investor interests, initiatives to promote investor confidence and the integrity of the securities marketplace, and other issues.[260] The Committee is composed of the Investor Advocate, a representative of state securities commissions, a representative of the interests of senior citizens, and not fewer than 10 or more than 20 members appointed by the Commission to represent the interests of various types of individual and institutional investors.[261]

Exchange Act Section 39 authorizes the Committee to submit findings and recommendations for review and consideration by the Commission.[262] The statute also requires the SEC "promptly" to issue a public statement assessing each finding or recommendation of the Committee and disclosing the action, if any, the Commission intends to take with respect to the finding or recommendation.[263] While the Commission must respond to the IAC's recommendations, it is under no obligation to agree with or act upon the recommendations.[264]

In its reports to Congress, including this one, the Office of the Investor Advocate summarizes the IAC recommendations and the SEC's responses to them.[265] This report covers all recommendations the IAC has made since its inception.[266] SEC responses to IAC recommendations may

take various forms. If an IAC recommendation pertains to a current rulemaking, the Commission's proposing release or the adopting release may constitute the Commission's response. If an IAC recommendation involves no current rulemaking, Chair White has indicated that the Commission would respond with a written statement.[267]

The Commission may be pursuing initiatives that are responsive to IAC recommendations but have not yet been made public. Commission staff—including staff of the Office of the Investor Advocate—are prohibited from disclosing nonpublic information.[268] Therefore, any such initiatives are not reflected in this Report.

SHORTENING THE TRADE SETTLEMENT CYCLE IN U.S. FINANCIAL MARKETS

This recommendation,[269] adopted on February 12, 2015, calls for shortening the security settlement period in the U.S. financial markets from a three-day settlement cycle (referred to as T+3) to a one-day settlement cycle (T+1) for "at least" transactions in U.S. equities, corporate and municipal bonds, and unit investment trusts. The IAC acknowledged a proposal of the Depository Trust & Clearing Corporation (DTCC) to shorten the settlement cycle to a two-day period (T+2), but favored a move to T+1 in the near term. Moreover, to the extent that T+2 was nevertheless pursued, the IAC recommended that the Commission work with industry participants to create a clear plan for moving to T+1 in an expedited fashion rather than pausing at T+2 for an indeterminate period of time.

COMMISSION RESPONSE The Commission response to this recommendation is pending.

IMPARTIALITY IN THE DISCLOSURE OF PRELIMINARY VOTING RESULTS

Exchange Act Rule 14a-2(a)(1) provides an exemption from the proxy rules for brokers that forward proxy materials to shareholders who own shares in "street name."[270] On October 9, 2014, the IAC adopted a recommendation that the staff of the Commission take the steps necessary to ensure that the exemption is conditioned upon the broker (and any intermediary designated by the broker) acting in an impartial and ministerial fashion throughout the proxy process, and that any broker who uses an intermediary take reasonable steps to verify that the intermediary is not subject to impermissible conflicts of interest and will act in an impartial manner. In adopting these recommendations, the IAC noted several concerns about current industry practices, including the disclosure of preliminary voting results to issuers while the results are withheld from exempt solicitors, as well as possible conflicts of interest between the issuer and the broker's designated intermediary.

COMMISSION RESPONSE The Commission response to this recommendation is pending.

THE ACCREDITED INVESTOR DEFINITION

On October 9, 2014, the IAC adopted a set of recommendations related to the Commission's review of the accredited investor definition as required by the Dodd-Frank Act.[271] The IAC first recommended that the Commission seek to determine whether the current definition achieves the goal of identifying a class of individuals who do not need the protections afforded by the Securities Act of 1933 because they are sufficiently able to protect their own interests. If, as the IAC expects, the analysis reveals a failure to meet that goal, then the Committee recommended prompt rulemaking to revise the definition.

The IAC also recommended that the Commission revise the definition to enable individuals to qualify as accredited investors based on their financial sophistication. However, should the Commission choose to continue with an approach that relies exclusively or mainly on financial thresholds, the Committee recommended the consideration of alternative approaches to setting those thresholds, such as limiting investments in private offerings to a percentage of assets or income.

In addition to any changes to the accredited investor standard, the IAC recommended that the Commission take concrete steps to encourage development of an alternative means of verifying accredited investor status that shifts the burden away from issuers. The IAC also recommended that the Commission strengthen the protections that apply when non-accredited individuals, who do not otherwise meet the sophistication test for such investors, qualify to invest solely by virtue of relying on advice from a purchaser representative.

COMMISSION RESPONSE. At the IAC meeting on April 9, 2015, Chair White said that Commission staff is completing its internal review of the definition of accredited investor.

CROWDFUNDING

At its meeting on April 10, 2014, the IAC adopted a package of six recommendations for the SEC to strengthen its proposed rules to implement the crowdfunding provisions of the JOBS Act.[272] The Committee stated that its recommendations would better ensure that investors understand the risks of crowdfunding and avoid unaffordable financial losses. Among other things, the Committee recommended that the SEC:

- Adopt tighter limits on the amount of money that investors could invest in crowdfunding;
- Strengthen the mechanisms for the enforcement of the investment limits in order to better prevent errors and evasion;
- Clarify and strengthen the obligations of crowdfunding intermediaries to ensure that issuers comply with their legal obligations; clarify the requirements for background checks; clearly affirm the right of portals to "curate" offerings; and consider a tiered regulatory structure based upon factors such as the size of offering, investment limits, and participation by individuals with a record of securities law violations;
- Enhance the effectiveness of educational materials for investors;
- Replace the proposed definition of electronic delivery with a stronger definition that, at a minimum, requires disclosure of a specific URL where required disclosures can be found; and
- Replace the proposal to eliminate application of the integration doctrine with a narrower approach.

COMMISSION RESPONSE. These recommendations relate to proposed rules that are still under consideration.[273] Chair White told the IAC at its April 9, 2015, meeting that crowdfunding is the last major rulemaking to complete under the JOBS Act and is a priority for 2015. Earlier, Chair White informed the IAC that the Commission's response to the IAC's recommendations would be reflected in the adopting release for the final rules.

DECIMALIZATION AND TICK SIZES

On January 31, 2014, the IAC adopted a resolution opposing any test or pilot programs to increase the minimum quoting and trading increments ("tick sizes") in the securities markets.[274] The resolution argued that larger tick sizes would disproportionately harm retail investors by raising prices without achieving the goals of improved research coverage or liquidity of small-cap companies.

If, however, the SEC were to decide to pursue a pilot program of increasing tick sizes, the IAC made three more recommendations: to limit the pilot program's duration, with a short "sunset" on the pilot unless benefits were proven to outweigh the costs; to conduct a careful evaluation of costs and benefits to investors, with a particular focus on retail investors; and to pilot other competition-based measures designed to encourage trading and capital formation.

COMMISSION RESPONSE. On June 24, 2014, the Commission directed the national securities exchanges and FINRA (collectively, "SROs") to submit a plan for a pilot program to test a tick size of 5 cents per share in three groups of securities. Within the Order to the SROs, the Commission

specifically discussed the IAC recommendations.[275] On August 25, 2014, the SROs submitted a plan for a 12-month pilot program,[276] and Chair White subsequently encouraged the Committee's further feedback on the proposed pilot.[277] On May 6, 2015, after receiving 77 comment letters,[278] the Commission approved the SROs' proposal, with modifications, for a two-year pilot program to widen tick sizes for stocks of some smaller companies.[279] Among other modifications, the Commission increased the duration of the pilot program (from one year to two years) while reducing the size of companies in it (lowering the market capitalization threshold from $5 billion to $3 billion). Implementation will begin May 6, 2016.

In the footnotes to the SEC release dated May 6, 2015, several references are made to the IAC recommendations. In particular, footnote 269 notes the IAC's "concern that a pilot would disproportionately harm retail investors because their trading costs would rise." It goes on to state, "The Commission has carefully considered the IAC Recommendations from January 2014. After careful deliberation and considering the IAC Recommendations, the Commission is approving the NMS plan, as modified."

LEGISLATION TO FUND INVESTMENT ADVISER EXAMINATIONS

On November 22, 2013, the IAC recommended that the SEC request legislation from Congress that would authorize the Commission to impose user fees on SEC-registered investment advisers to provide a scalable source of funding for more frequent compliance examinations of advisers.[280] The IAC asserted that the examination cycle for SEC-registered investment advisers, was "simply inadequate to detect or credibly deter fraud."

COMMISSION RESPONSE. While refraining from taking a position on user fees, the Commission's Fiscal Year 2015 budget request made it a top priority to increase examinations of investment advisers. The Commission's request called for an increase of 316 new positions to the examination program in the SEC's Office of Compliance Inspections and Examinations (OCIE).[281] Congress appropriated $1.5 billion for the SEC in FY 2015,

which was less than the SEC's request of $1.722 billion but 11 percent more than the previous year's overall budget. The SEC budget request for FY 2016 calls for funding to hire an additional 225 OCIE examiners, primarily to conduct additional examinations of investment advisers. It is estimated that the increase in staffing would raise examination coverage of advisers to approximately 14 percent per year (after a time lag needed for hiring and training).[282]

In a related development, Chair White has asked staff to develop recommendations for a program of third-party compliance reviews for investment advisers. The reviews would supplement, but not replace, the examinations conducted by OCIE staff.[283]

BROKER-DEALER FIDUCIARY DUTY

On November 22, 2013, the IAC adopted a set of recommendations encouraging the SEC to establish a fiduciary duty for broker-dealers when they provide personalized investment advice to retail investors.[284] The Committee preferred to accomplish this objective by narrowing the exclusion for broker-dealers within the definition of an "investment adviser" under the Investment Advisers Act of 1940. As an alternative, the Committee recommended the adoption of a rule under Section 913 of the Dodd-Frank Act to require broker-dealers to act in the best interests of their retail customers when providing personalized investment advice, with sufficient flexibility to permit certain sale-related conflicts of interest that are fully disclosed and appropriately managed. In addition, the Committee recommended the adoption of a uniform, plain English disclosure document to be provided to customers and potential customers of broker-dealers and investment advisers. The document would disclose information about the nature of services offered, fees and compensation, conflicts of interest, and the disciplinary record of the broker-dealer or investment adviser.

COMMISSION RESPONSE. In March 2015, Chair White announced her belief that broker-dealers and investment advisers should be subject to a uniform fiduciary standard of conduct when providing personalized securities advice to retail investors. In Congressional testimony, she said that she would soon begin discussing the issue with fellow Commissioners, and that she had asked Commission staff to develop rulemaking recommendations for Commission consideration.[285]

The following month, she told the IAC:

> As most of you know from the remarks I made last month on my own behalf, I expect we will be discussing advancing rulemakings to impose a uniform fiduciary duty on broker-dealers and investment advisers under Section 913 of the Dodd-Frank Act and to require a program of third party examinations of investment advisers to increase our exam coverage.

Further Commission action is pending.

UNIVERSAL PROXY BALLOTS

On July 25, 2013, the IAC adopted a recommendation urging the SEC to explore the relaxation of the "*bona fide* nominee rule" (Rule 14a-4(d)(1)) to provide proxy contestants with the option, but not the obligation, to use Universal Ballots in connection with short slate director nominations.[286] The IAC also encouraged the Commission to hold one or more roundtable discussions on the topic.

COMMISSION RESPONSE. On February 19, 2015, the Commission held a Proxy Voting Roundtable, which discussed universal proxy ballots as one of two topics. In a briefing to the IAC on April 9, 2015, David Frederickson, Chief Counsel of the SEC Division of Corporation Finance, remarked that Commission staff was actively thinking through issues raised by universal ballots, in preparation for a possible recommendation to the Commission.

DATA TAGGING

At its meeting on July 25, 2013, the IAC adopted a recommendation for the SEC to promote the collection, standardization, and retrieval of data filed with the SEC using machine-readable data tagging formats.[287] The Committee urged the SEC to take steps to reduce the costs of providing tagged data, particularly for smaller issuers and investors, by developing applications that allow users to enter information on forms that can be converted to machine-readable formats by the SEC. In addition, the IAC recommended that the SEC give priority to the data tagging of disclosures on corporate governance, including information about executive compensation and shareholder voting.

COMMISSION RESPONSE. The Commission has incorporated the collection of structured data into the following final and proposed rules:

- **Investment Company Reporting Modernization.** On May 20, 2015, the Commission proposed a new rule that would require reporting of certain information in a structured data format.[288] The proposed rule would require two new forms: Form N-PORT, which would require certain registered investment companies to report information about their monthly portfolio holdings to the Commission in an eXtensible Markup Language ("XML") format; and Form N-CEN, which would require registered investment companies, other than face amount certificate companies, annually to report certain census-type information to the Commission, also in an XML structured format.[289] According to the release, the structured data format would make both forms more useful to investors and others.[290]
- **Executive Pay versus Performance.** On April 29, 2015, the Commission voted to propose rules to require companies to disclose the relationship between executive compensation and the financial performance of a company. The proposed rule would require a company to disclose, in a table, executive pay and performance information for itself and companies in a peer group. Companies would also be required to tag the disclosure in an interactive data format using eXtensible Business Reporting Language, or XBRL, with the requirements phased in for smaller reporting companies.[291]
- **Regulation A+.** On March 25, 2015, the Commission adopted final rules to update and expand Regulation A, an exemption from registration for smaller issuers of securities. The Regulation now requires that issuers file certain key information in XML format. Under the rule, Part I of Form 1-K will consist of an online XML based fillable form, and it will capture key information about the issuer and its proposed offering.[292]
- **Reporting and Dissemination of Security-Based Swap Information.** On January 14, 2015, the Commission adopted rules that will require security-based swap data repositories (SDRs) to register with the SEC.[293] The rules require registered SDRs to establish and maintain policies and procedures that enumerate the specific data elements and the acceptable data formats for transaction reporting.[294] Any reporting languages or protocols adopted by registered SDRs must be open-source structured data formats that are widely used by participants. The Commission also made clear that SDRs should be able to provide to the Commission normalized and uniform data, which would allow the Commission to analyze data from a single SDR and to aggregate and analyze data received from multiple SDRs. The Commission left open the possibility of adopting specific formats and taxonomies in the future.[295]
- **Asset-backed Securities**. On September 4, 2014, the Commission adopted rules to require loan-level disclosure for asset-backed securities in XML format so investors may more easily access and analyze data about the asset pool.
- **Crowdfunding.** Proposed rules governing "crowdfunding"[296] include requirements for issuers to file certain key financial information in an XML format.

- **Money Market Funds.** Rule 30b1-7 under the Investment Company Act of 1940 requires money market funds to file Form N-MFP within five business after the end of each month. The information required by the form must be data-tagged in XML format and filed through EDGAR.[297]

Consistent with the IAC's recommendation to reduce the costs of providing structured data, Chair White has indicated that Commission staff is considering a new filing method called "Inline-XBRL."[298] This new technology would effectively eliminate the need for companies to reconcile separate HTML and XBRL versions of the financial statement content, thus reducing the possibility of rekeying or similar errors. Instead, Inline-XBRL would allow companies to integrate (or embed) the XBRL tagging of the financial statements directly into their standard HTML formatted 10-K and 10-Q filings. In addition, Commission staff is working on a prototype viewer to allow users to display and search the integrated XBRL tagging while viewing the familiar HTML version of the financial statements.

TARGET DATE MUTUAL FUNDS

On April 11, 2013, the IAC adopted recommendations for the Commission to revise its proposed rule regarding target date retirement fund names and marketing.[299] The package of five IAC recommendations pertained to a 2010 SEC proposal that would, among other things, require marketing materials for target date retirement funds to include a table, chart, or graph depicting the fund's asset allocation over time (*i.e.*, an "asset allocation glide path").[300]

As either a replacement for or supplement to the SEC's proposed asset allocation glide path illustration, the IAC recommended that the Commission develop a glide path illustration that would be based on a measure of fund risk. To promote comparability between funds, the IAC recommended the adoption of standard methodologies to be used in glide path illustrations. In addition, the IAC urged the Commission to require clearer disclosure about the risk of loss, the cumulative impact of fees, and the assumptions used to design and manage the funds.

COMMISSION RESPONSE. On April 3, 2014, the Commission reopened the comment period on the proposed rule in order to seek public comment on the IAC's recommendations to adopt a risk-based glide path illustration and the methodology to be used for measuring risk.[301] The comment period closed on June 9, 2014, and a final rule has not yet been adopted.

GENERAL SOLICITATION AND ADVERTISING

On October 12, 2012, the IAC adopted a set of seven recommendations concerning rulemaking to lift the ban on general solicitation and advertising in offerings conducted under Rule 506.[302] The IAC asserted that the recommendations would strengthen investor protections and enhance regulators' ability to police the private placement market.

COMMISSION RESPONSE. On July 10, 2013, the SEC took three related actions.[303] First, the Commission adopted a final rule permitting general solicitation and advertising in Rule 506 offerings.[304] Second, it adopted a final rule disqualifying offerings involving felons and other bad actors.[305] Third, it proposed an additional rule to enhance the Commission's ability to evaluate the development of market practices in Rule 506 offerings and to address concerns that may arise because the ban on general solicitation was lifted.[306]

Taken together, the two final rules and the proposed rule generally reflect consideration of the IAC recommendations. However, the majority of the IAC recommendations relate to the proposed rule, which has not yet been adopted.

ENDNOTES

1 Exchange Act § 4(g)(2)(A)(ii), 15 U.S.C. § 78d(g)(2)(A)(ii) (2012).

2 Exchange Act § 4(g)(6), 15 U.S.C. § 78d(g)(6).

3 Exchange Act § 4(g)(6)(A)(i), 15 U.S.C. § 78d(g)(6)(A)(i).

4 Exchange Act § 4(g)(6)(B)(i), 15 U.S.C. § 78d(g)(6)(B)(i).

5 *Id.*

6 Exchange Act § 4(g)(4)(A), 15 U.S.C. § 78d(g)(4)(A).

7 Exchange Act § 4(g)(8)(A), 15 U.S.C. § 78d(g)(8)(A).

8 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).

9 Exchange Act § 4(g)(8)(D), 15 U.S.C. § 78d(g)(8)(D).

10 Exchange Act § 4(g)(4)(B), 15 U.S.C. § 78d(g)(4)(B).

11 Exchange Act § 4(g)(4)(C), 15 U.S.C. § 78d(g)(4)(C).

12 Exchange Act § 4(g)(4)(D), 15 U.S.C. § 78d(g)(4)(D).

13 Exchange Act § 4(g)(4)(E), 15 U.S.C. § 78d(g)(4)(E).

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16 *See generally* Concept Release on Equity Market Structure, Exchange Act Release No. 61358 (Jan. 14, 2010) [75 FR 3594 (Jan. 21, 2010)] (hereafter, "Equity Market Concept Release").

17 *Id.*

18 *Id.*.

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20 Regulation of Exchanges and Alternative Trading System: Final Rule, Exchange Act Release No. 40760 (Dec. 8, 1998) [63 FR 70844 (Dec. 22, 1998)].

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23 *Id.*

24 See Press Release, SEC Announces Members of New Equity Market Structure Advisory Committee (Jan. 13, 2015), available at http://www.sec.gov/news/pressrelease/2015-5.html.

25 See Mary Jo White, Chair, SEC, Speech at Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference, Enhancing Our Equity Market Structure (June 5, 2014), available at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312; Concept Release on Equity Market Structure, Exchange Act Release No. 61358 (Jan. 14, 2010) [75 FR 3594, 3596 (Jan. 21, 2010)].

26 *See* Equity Market Structure Advisory Committee Meeting (May 13, 2015), *available at* https://www.sec.gov/news/otherwebcasts/2015/equity-market-structure-advisory-committee-051315.shtml. *See also* SEC Equity Market Structure Advisory Committee Meeting, SIFMA Hearing Summary (May 14, 2015), *available at* http://www.sifma.org/members/hearings.aspx?id=8589954718.

27 *See* Bradley Hope & Scott Patterson, NYSE Plan Would Revamp Trading, Wall St. J., Dec. 17, 2014. (Intercontinental Exchange Inc. controls the NYSE, NYSE Arca and NYSE MKT exchanges).

28 *See* Letter to Brent Fields, Sec'y, SEC, from Joe Ratterman, then CEO (now Chairman), BATS Global Markets, Inc., File No. 4-680, (Jan. 21, 2015), available at https://www.sec.gov/rules/petitions/2015/petn4-680.pdf. (BATS Global Markets controls the BATS, BATS Y, EDGA and EDGX exchanges).

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32 *See* SEC Press Release, supra note 24. *See also* White, supra note 25.

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42 *Id.* at 122-23.

43 *Id.* at 143-50.

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47 Order Granting Approval of a Proposed Rule Change Consisting of Rule G-18, on Best Execution of Transactions in Municipal Securities, and Amendments to Rule G-48, on Transactions with Sophisticated Municipal Market Professionals ("SMMP"), and Rule D-15, on the Definition of SMMP, Exchange Act Release No. 73764 (Dec. 5, 2014) [79 FR 53236 (Sept 8, 2014)].

48 *See* MSRB, *SEC Approves MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities and Related Amendments to Exempt Transactions with Sophisticated Municipal Market Professionals*, MSRB Regulatory Notice 2014-22 (Dec. 8, 2014), *available at* http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2014-22.ashx?n=1. Amendments to Rule G-48 provide that the best execution obligations will not apply to transactions with customers that are SMMPs, as defined by MSRB Rule D-15. The MSRB, in coordination with the Financial Industry Regulatory Authority ("FINRA"), plans to issue practical guidance on complying with the best execution standard prior to the rule become effective. MSRB, *SEC Approves MSRB Rule G-18 on Best Execution of Transactions in Municipal Securities and Related Amendments to Exempt Transactions with Sophisticated Municipal Market Professionals*, MSRB Regulatory Notice 2014-22 (Dec. 8, 2014), *available at* http://www.msrb.org/~/media/Files/Regulatory-Notices/Announcements/2014-22.ashx?n=1.

49 *See* SEC, *Report on the Municipal Securities Market*, July 31, 2012, at 147-50, http://www.sec.gov/news/studies/2012/munireport073112.pdf.

50 *See id.* at 148.

51 *See id.*

52 *See id.*

53 *Id.*

54 MSRB, *Request for Comment on Draft Rule Amendments to Require Dealers to Provide Pricing Reference Information on Retail Customer Confirmations*, MSRB Regulatory Notice 2014-20 (Nov. 17, 2014), available at http://www.msrb.org/~/media/Files/Regulatory-Notices/RFCs/2014-20.ashx?n=1; Press Release, MSRB Holds Quarterly Meeting (May 6, 2014), *available at* http://www.msrb.org/News-and-Events/Press-Releases/2014/MSRB-Holds-Quarterly-Meeting-April-2014.aspx; Press Release, MSRB Holds Quarterly Meeting (Aug. 5, 2014), *available at* http://www.msrb.org/News-and-Events/Press-Releases/2014/MSRB-Holds-Quarterly-Meeting-July-2014.aspx.

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58 *Id.*

59 *Id.*

60 *Id.*

61 *Id.*

62 *Id.* at iii.

63 *Id.* at 106.

64 *Id.*

65 *Id.*

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68 *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-92 (1963); *See also* Staff of the U.S. Securities and Exchange Commission, *supra note* 57 at 22.

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74 *Id.*

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79 *Id.*

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81 *Id.*

82 Dodd-Frank Act, Pub. L. No. 111-203, § 913, 124 Stat. 1376 (2010).

83 *Id.*

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85 *Id.* at vi.

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87 *Id.* at vi; Exchange Act § 15(k)(1), 15 U.S.C. § 78.

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95 *Id.*

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99 See Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice [80 FR 21928 (April 20, 2015)].

100 *See id.*

101 *See id.*

102 Employment Retirement Income Security Act, § 3(21)(A) (1974), 29 U.S.C. §1002(21)(A); See also Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, *supra* note 99.

103 25 C.F.R. § 2510.3-21(c) (2015). *See also* Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, *supra* note 99.

104 *Id.*

105 *See Id*. The 2015 proposal notes that brokers who provide investment advice to IRA owners or plan participants, and who otherwise satisfy the terms of the current five-part test, already are fiduciaries under the existing fiduciary regulation. See Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, *supra* note 99. The 2015 proposal cites as an example a broker who regularly advises an individual IRA owner on specific investments, the IRA owner routinely follows the recommendations, and both parties understand that the IRA owner relies on the broker's advice; in that case, "the broker is almost certainly a fiduciary."

106 *See id.*

107 *See id.*

108 *See id.* at 21936.

109 *See id.*

110 *See id.*

111 *See id.*

112 *See id.* at 21929.

113 *See id.*

114 *See id.* at 21936.

115 *See id.* at 21929.

116 *See id.* For purposes of the BIC Exemption, the 2015 Proposal's definition of "retail investors" includes (1) the participants and beneficiaries of participant-directed plans, (2) IRA owners, and (3) the sponsors of non-participant directed plans with fewer than 100 participants to the extent the sponsors act as a fiduciary with respect to plan investment decisions. See Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, *supra* note 99 at 21929 n. 2.

117 *See* Definition of the Term "Fiduciary"; Conflict of Interest Rule—Retirement Investment Advice, *supra* note 99 at 21929.

118 *See id.*

119 *See id.*

120 See, e.g., Justin Baer & Andrew Ackerman, SEC Head Backs Fiduciary Standards for Brokers, Advisers, Wall St, J., Mar. 17, 2015; Michael J. de la Merced, S.E.C. Chief Voices Support for Higher Advice Standard for Brokers, N.Y. Times, Mar. 17, 2015.

121 *See id.*

122 *See id.*

123 *See id.*

124 *See* Investment Company Reporting Modernization, Securities Act Release No. 9776 (May 20, 2015) [__FR__ (Date)]. For purposes of this Report, the term "funds" means registered investment companies other than face amount certificate companies and any separate series thereof—i.e., management companies and unit investment trusts.

125 *See id.*

126 *See id.*

127 *Id.* (citing data obtained from the Investment Company Institute).

128 *Id.*

129 *Id.* (citing Investment Company Institute, 2015 Investment Company Factbook 9 (55th ed., 2015)).

130 *Id.* (citing Use of Derivatives by Investment Companies Under the Investment Company Act of 1940, Investment Company Act Release No. 29776 (Aug. 31, 2011) [76 FR 55237 (Sept. 7, 2011)]).

131 *Id.*

132 *Id.*

133 *Id.*

134 *Id.*

135 *Id.*

136 *Id.*

137 *Id.*

138 *Id.* Specifically, the Commission is proposing new Form N-PORT, which would require certain funds to report information about their monthly portfolio holdings to the Commission in a structured data format. In addition, the Commission is proposing amendments to Regulation S-X, which would require standardized, enhanced disclosure about derivatives in investment company financial statements, as well as other amendments. The Commission is also proposing new rule 30e-3, which would permit but not require funds to transmit periodic reports to their shareholders by making the reports accessible on a website and satisfying certain other conditions. The Commission is proposing further new Form N-CEN, which would require registered investment companies, other than face amount certificate companies, to annually report certain census-type information to the Commission in a structured data format. Finally, the Commission is proposing to rescind current Forms N-Q and N-SAR and to amend certain other rules and forms.

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258 Exchange Act § 4(g)(8)(B), 15 U.S.C. § 78d(g)(8)(B).

259 Although other descriptive terms may be used, the ombudsmen at several agencies, including, for example, the Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, and Federal Housing Finance Agency, follow these basic tenets of ombudsman practice, *available a*t http://www.consumerfinance.gov/ombudsman/; https://www.fdic.gov/regulations/resources/ombudsman/; and http://www.fhfa.gov/AboutUs/Pages/About-The-Ombudsman.aspx.

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263 Exchange Act § 39(g), 15 U.S.C. § 78pp(g).

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265 According to Exchange Act Section 4(g)(6)(B)(ii), 15 U.S.C. § 78d(g)(6)(B)(ii), a Report on Activities must include several enumerated items, and it may include "any other information, as determined appropriate by the Investor Advocate."

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