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Mary Jo White, Chair
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Introduction

Chairman Terry J. Lundgren

Hello everybody. We're going to go ahead and get started. I know the rain is slowing a few people down in terms of getting here on schedule, but since you all got here on time and our speaker arrived on time, we're going to go ahead and begin. Welcome to the 460th meeting of the Economic Club of New York in our 110th year together. I'm Terry Lundgren, Chairman of the Economic Club and Chairman and CEO of Macy's, Inc. The Economic Club of New York is the nation's leading nonpartisan forum for speeches on economic, social, and political issues. More than 1,000 prominent guest speakers have appeared before the Club over this last century and have established a very strong tradition of excellence. I'd like to take a moment to recognize the 245 members of the Centennial Society, each of whom has made a contribution of $10,000 or more to the Club and are very important to the sustainability of this organization. They are seated in the front part of the room. We also would like to offer a special welcome to our students, our student interns, who are here from Hollins College in Virginia. They're in the back of the room. So, welcome and enjoy the program. It's a pleasure for me to welcome back to the Club a very distinguished guest speaker today, Mary Jo White, Chair of the Securities and Exchange Commission. As many of you know, Chair White was sworn in as the 31st Chair of the SEC almost four years ago. She was nominated to be SEC Chair by President Obama on February 7th of 2013 and two months later was confirmed by the Senate. Chair White arrived at the SEC with decades of experience as a federal prosecutor and securities lawyer, as the U.S. Attorney for the

Southern District of New York from 1993 to 2002. She specialized in prosecuting complex security and financial institution frauds and international terrorism cases. Under her leadership, the office earned convictions against the terrorists responsible for the 1993 bombings of the World Trade Center and the bombings of the American Embassies in Africa. She is the only woman to hold this top position in the 200-year history of this office. Prior to becoming the U.S. Attorney for the Southern District of New York, Chair White served as the first Assistant U.S. Attorney and later Acting U.S. Attorney for the Eastern District of New York from 1990 to 1993. She previously served as an Assistant U.S. Attorney for the Southern District of New York from '78 to '81 and became Chief Appellate Attorney of the Criminal Division. After leaving her U.S. Attorney post, Chair White became Chair of the Litigation Department for Debevois & Plimpton in New York. She earned her undergraduate degree, Phi Beta Kappa, from William and Mary and her master's degree in psychology from the New School of Social Research. She earned her law degree in 1974 at Columbia Law School where she was an officer of the *Law Review*. Chair White has won numerous awards in recognition for her outstanding work both as a prosecutor and a securities lawyer. The 2012 Chambers USA Women in Law Awards named her Regulatory Lawyer of the Year. Among other honors she has received, she was named the Margaret Brent Women Lawyers of Achievement Award, the George W. Bush Award for Excellence in Counter-terrorism, the Sandra Day O'Connor Award for Distinction in Public Service, and the Women of Power and Influence Award given by the National Organization of Women. She has also served as a Director of the NASDAQ Stock Exchange and on its Executive, Audit, and Policy Committees as well. Chair White is a member of the Council on Foreign Relations and I hereby nominate her to become a member of the Economic Club of New York. (Applause) I hope you'll accept our nomination. And just a reminder, this is an on-the-record conversation today with Chair White. Chair White, the podium is yours. (Applause)

Mary Jo White, Chair

Securities and Exchange Commission

You know Terry didn't need this step. I'm actually taller than he is but we're not telling anyone. But seriously, Terry, thank you for that very generous introduction. I think I'm not allowed to respond to your kind invitation until 11:59 or noon on Friday, but I'll promptly reply after that. Seriously, it's always great to be back speaking at the Economic Club of New York. While I've always tried to be tactful, I've frequently observed while in office how different the audiences are here than they are typically in Washington. I could stop there I guess. But when I discuss serious and complex topics, I could elaborate but I will leave it at the word they're different. So I very much appreciate the knowledge you bring as an audience to the very important issues that certainly are in the Securities and Exchange Commission's space.

I especially appreciate the invitation to speak today which is three days away from my completing my term as the 31st Chair of the Securities and Exchange Commission. You know I'm often asked these days for my reflections on this period of my public service. I've had some earlier stints as you've heard. My most frequent response is "never a dull moment." My less irreverent observation is how proud I am of what the agency has accomplished for investors and the markets in the last four years. But I will leave it to others to catalog and to assess what we've done. My topic for today is forward looking.

As you know, right now, there is a lot of discussion about how the new administration may weaken or even reverse many of the reforms that the Commission and our fellow financial regulators have implemented since the financial crisis. While that is a concern that I very much share, my focus today actually reaches even further down the road to how, as we move beyond the regulatory response to the financial crisis, the SEC should continue to optimally protect investors and preserve our capital markets as fair, orderly, and efficient engines of economic growth.

Almost exactly 42 years ago, my predecessor – one of my predecessors – Chairman Ray Garrett, chose this forum to announce that the SEC was unfixing all securities commission rates, ending close to 183 years of a business practice that began under the famous buttonwood tree on Wall Street. The SEC's action was a momentous step, and it came at a time of great turmoil for the American economy.

It was 1975, the year after I graduated from law school. OPEC had quadrupled oil prices; an economic malaise had descended; and the stock market had crashed. The 1975 Securities Acts

Amendments were enacted that summer, giving the Commission broad new powers, including a directive to establish a national market system. Many then called on the Commission to also use its regulatory authority to cushion the impact of the economic downturn, and perhaps just as many warned against meddling with the functioning of the capital markets. Then, as now, there were also voices arguing against diminishing the SEC's independence as it charts the course of financial regulation for the markets.

Now, I have no specific announcement for you today to compare to Chairman Garrett's back then, but the importance of reassessing the SEC's role as an independent financial regulator now harkens back to the environment in 1975, when the Commission's role was being similarly reviewed. You know we're barely six years out from the most devastating financial crisis in recent memory, and the Commission, as in 1975 and throughout its history, has been chastised for both doing too little and doing too much. Major legislation – for us at the SEC, the Dodd-Frank Act and the JOBS Act – has reshaped the Commission's responsibilities in ways that are still being debated, and that now face a fresh round of discussion and legislative activity.

The questions facing the SEC at this crossroad are the same ones that it has faced many times before, but which – as in 1975 – events have now rendered acute. First, beyond facilitating investors' access to full and fair disclosure, what is – and what should be – the role of the Commission in regulating the capital markets after the financial crisis? And, second, how does the Commission continue as a strong independent agency in the current environment?

Now you may be relieved to know I will not attempt to address these questions fully today. They are both very complex and nuanced and, frankly, I do not have all the answers. But these questions are central to defining the role that the Commission will play in financial regulation for years to come, and they have consumed much of my time as Chair. So today, I will share with you my thinking on what is required and what we have already done to build an SEC that has the strength and flexibility to oversee the constantly evolving post-crisis markets. Most importantly, I will describe some of the critical work that we have left for the Commission to finish.

As I often do, I will start with my bottom line: for the SEC to be a strong market regulator, wiser from the experience of the financial crisis, we must be ready to use the full array of tools available to us – not relying on disclosure and enforcement alone. And we must do so with a fierce independence in applying our expert best judgment to protect investors, to maintain fair, orderly, and efficient markets, and to facilitate the formation of capital by the companies whose innovation and growth drives the American economy.

Now, the U.S. capital markets today, of course, bear little resemblance to the markets that Chairman Garrett oversaw in the 1970s. While their mainstay remains the issuance and trading of equities and bonds, the algorithmic trading and mostly hushed floors of today would be unrecognizable to an observer from 1975. The last 40 years have seen the advent of securitization, seismic changes in wholesale financing, a significant expansion in the size and diversity of asset management vehicles, and derivatives markets that now reach far beyond the single stock option. These developments and others, which went largely unnoticed by the broader investing public, were pushed abruptly to center stage during the financial crisis in 2008 and – to a much lesser, but still quite consequential extent – during the so-called "flash crash" of 2010, when the U.S. equity markets experienced an exceptionally rapid decline and recovery in a matter of minutes, unexplained by market fundamentals.

It was natural – indeed, I would suggest compelling – in 2008 and 2010 to ask whether the Commission's regulatory approach was appropriately matched to the modern market. As many of you will recall, there was a jumble of possible solutions, ranging from eliminating the agency to greatly augmenting its authority. My predecessor, Mary Schapiro had it right when she said, in her first remarks, her very first remarks as Chairman in 2009, that the crisis demonstrated how important a strong investor advocate remains. And now, with no sense of complacency, I am confident in reporting that the agency is today a stronger protector of investors than ever before and much better equipped to meet the challenges of the fast-paced, complex, and interconnected securities markets of 2017.

We have retooled and strengthened our enforcement exam programs; we've made the equity markets more resilient; we have enhanced the oversight of the asset management industry; and we are seeking ways to continually improve the information available to investors with our public company disclosure effectiveness review program. The Commission has also completed some of the most significant rulemakings in recent memory, with the last three years alone marked by – among other measures – major reforms addressing money market funds, over-the-counter derivatives, asset-backed securities, municipal finance, clearance and settlement, and private offering reform.

My tenure has come to mark – what I call anyway – the first "post-crisis" Commission. But the passage of time has not dissipated the urgency of the question highlighted in the crisis about the Commission's appropriate role in modern financial market regulation. The continuing debate about the appropriate role of the SEC is no doubt partly due to the many statutory mandates given the agency over the last six years – many more than any other financial regulator, and many dealing with highly controversial issues.

Executing these statutory mandates has occupied a significant space in the Commission's agenda. And, thanks to the work of this agency's exceptional staff, the bulk of these mandates are now complete. Throughout my tenure, however, I have sought to preserve bandwidth for our many "day jobs" - from reviewing thousands of issuer filings to overseeing hundreds of changes to exchange operations. And I have sought to return to the essential issues raised by the financial crisis to build the lasting regulatory frameworks necessary for modernizing the Commission's oversight of the capital markets.

Now, in building these frameworks, I have been guided by three principles that I believe are essential for the SEC to remain a strong capital markets regulator after the financial crisis. First, investor protection must be paramount. Markets depend on investors, who must have confidence in relying on the information in the marketplace. But we must be clear-eyed about the limits of even the best disclosure to meaningfully inform the full range of investors about how today's complex, interdependent products work and create risk.

Second, a market regulator must preserve the ability of investors to take informed risks and face the consequences, whether good or bad. While all financial markets involve some degree of risk, a fundamental distinction between investments and bank deposits in the modern era has been the absence of any promise that money invested will be protected by the government or otherwise. This risk is central to the vitality of the capital markets. It is a critical part of what fuels innovation in the economy, which an unduly heavy hand from regulators can threaten.

Finally, the third principle; a market regulator today and going forward must view the capital markets in the context of the larger financial system. While some segments of today's capital markets operate with considerable independence from the rest of the world's financial machinery, most are closely connected to the broader financial system, including depository institutions and insurance products.

For more than 80 years, mandatory disclosure has been the SEC's central tool for advancing our mission. Investors expect, and rely on full and accurate disclosure to make investment decisions and take risks. The Commission, in turn, is charged to act sharply to stop fraud and prevent unfair and dishonest practices, including misleading disclosures. Disclosure will continue to play a key role in post-crisis regulation. Indeed, I have sought to comprehensively reconsider what disclosure should look like and how best to deliver it in today's securities markets so that, in light of recent and possible but inevitable further technological changes, our fundamental disclosure regime keeps pace with the needs of investors. There are limits, however, in the ability of disclosure alone to adequately protect investors, especially as markets have expanded in size and complexity. Disclosure is a critical tool, but it would be foolish – indeed, I would say irresponsible – for the modern market regulator to ignore the other tools available to it.

Now this is not a radical concept. For decades, the Commission has used its authority to regulate directly most of the key participants in the securities markets, including exchanges, broker-dealers, and investment companies and advisers. The Commission, to name just a few examples, sets financial standards for broker-dealers, establishes market-wide trading rules, reviews the rule filings by exchanges, and supervises the clearing of securities. Perhaps the most important question for the post-crisis Commission is how we should judiciously use these authorities of direct intervention to further the three principles I've just outlined.

You know, at the most basic level, it ought to be indisputable that regulators need better and more timely information about the capital markets and market participants so that we can identify, assess, and respond to potential risks early. For too many years, the Commission's ability to monitor the markets has been outpaced by the rapid and diversifying developments in those markets, and I have spent much of my time as Chair trying to close that gap.

Similarly indisputable, as technology has come to dominate virtually every segment of the marketplace, it is imperative that there is a robust regime to protect the reliability of our market infrastructure and strengthen the resilience of market participants. The growing and intensifying challenges of cyber-security have heightened the importance of this protective regime. No investor should be asked to assume the risk of an operational failure, and the Commission should not shy away from necessary safeguards – for market participants or itself – in favor of a bit of short-term cost savings.

The more challenging questions center on what direct regulatory limits beyond these measures should be set to ensure that investors are protected, markets are orderly, and issuers can attract capital. The Commission has a long history of avoiding what is dubbed, in overly simplistic shorthand, "merit" regulation. Our founding statutes are predicated on, as Chairman Garrett put it, I think put it here, "the relatively free operation of the markets, where investors are fully informed, as nearly as may be, and the markets are operated fairly and honestly." That is still true at the SEC today and in our capital markets today.

But the Commission and the exchanges have long intervened directly to address problematic practices that were recognized as sufficiently adverse to the interests of investors. For example, after unfixing commissions in 1975, the Commission established financial responsibility requirements for broker-dealers, including rules for keeping adequate capital on hand and locking up customer assets. There is also a whole suite of rules aimed at preventing fraud through controls on trading, such as limits on the trading by a firm that is leading a new public offering. Investment companies face clear limits on their borrowing to achieve leverage. And so on.

These kinds of measures can be powerful and yet quite targeted, and it is important that the Commission continue to use them where appropriate in developing post-crisis regulation – especially in light of the developments of recent decades. In some cases, these changes have been in fundamental business practices – both asset management and equity trading today, for example, encompass a far broader array of strategies, including ETFs, than they did 20 years ago. Another key development, as the financial crisis made clear, is the strong interest that market regulators have in the vitality of the whole financial system – that is, in reducing systemic risk. Indeed, I believe that the goal of reducing systemic risk is a central tenant of the SEC's longstanding mission. You know there's much work to do, and the appropriate path forward must continually evolve. While acknowledging this changing landscape, I will highlight just a few ways that the Commission has sought to chart its post-crisis role.

Asset management and the asset management industry is among the most important areas of our regulatory responsibility. The college and retirement savings of so many Americans are directly connected to this part of our mandate. The Commission has long been the primary regulator of investment companies and advisers in the United States, and market regulation is natural given the nature of the industry – an agency business that manages investments across a diverse range of markets and products. In my time as Chair, we have built a framework for modernizing our regulation of asset management that has used all of the tools at our disposal.

We started with the basics, enhancing the information that is available to investors about funds and their managers. As in other areas, disclosure to investors has remained central to our efforts on asset management. But we also expanded significantly the information that will be provided on a regular basis to the Commission, including detailed data about a fund's portfolio, liquidity position, and financing activities. This information will give the Commission an unprecedented ability to monitor and better understand market practices and, if necessary, act to protect investors.

The Commission has also implemented new controls on how funds manage the liquidity of their portfolios and proposed rules to enhance the management of derivatives positions. These steps marked an important shift in the Commission's approach to asset management. Disclosure and monitoring remained critical, but the expansion in funds across asset classes and derivative instruments also demanded more direct steps to enhance risk management. So too with business continuity and transition planning, which are the subject of a separate proposal. It will be important for the next Chair and Commission to make it a priority to lead the effort to complete the last stages of this initiative.

Another area of particular focus for me has been equity market structure. Here, too, we have initially used the tools of expanded disclosure for investors and enhanced monitoring for the Commission. Among our most prominent measures recently has been the adoption of a final plan for a consolidated audit trail, also known as CAT, a game-changing initiative that will for the first time give regulators full information about all equity and options trades in U.S. markets. We've also worked to significantly enhance the operational integrity of the critical market infrastructure that stands at the center of the capital markets, including through the comprehensive Regulations Systems Compliance and Integrity. There are also outstanding proposals to enhance the transparency of all significant alternative trading venues for equities and to provide investors more information about where and how their orders are handled. The staff of the SEC has also developed its recommendation for a pilot program to assess the impact of potential conflicts of interest in how exchanges and broker-dealers are compensated for order flow and execution.

But there is other significant work to be done to optimize the functioning of our equity markets. In particular, the staff has now developed detailed analyses demonstrating how certain trading strategies can be destabilizing in vulnerable market conditions. There is a clear need for a tailored anti-disruptive trading rule to reduce the potential harm from these types of strategies. So too there is a need to further clarify the dealer registration requirements for proprietary trading firms – high frequency trading firms that execute a significant volume of intra-day trading for their own accounts, frequently turn over their positions by buying and selling securities throughout the day, and generally carry small overnight positions relative to the amount of their intra-day trading. Preventing sources of needless instability in our equity markets will depend on the next Chair and Commission taking further steps to address the registration and other regulatory requirements for these types of firms.

Another area for further work is the financial responsibility rules for broker-dealers. The Commission completed a major update to these rules in my first year as Chair, and the next Chair should carry this program forward. The staff has been working to prepare updates for all clearing broker-dealers, which would enhance their capital and liquidity requirements as well as formalize certain stress tests. These updates would provide important additional investor protection as well as mitigate the broader market impact of the failure of a large clearing firm, whether or not it is affiliated with a bank.

A related effort is focused on ensuring that the public disclosures of financial institutions, including bank holding companies, has kept pace with the vast changes in our disclosure regime and how such institutions operate today. The staff has reexamined the principal guide on this matter, which was issued in 1976, and has prepared a public request for comment. It will be important for the next Chair to have the Commission approve this request to gather feedback from stakeholders and then advance appropriate changes to make financial institution disclosure more effective for investors and the marketplace.

So, this work – both completed and to come – I think illustrates how different the role of a market regulator must be today from the role envisioned in 1934, when there was a serious debate – even I'm not old enough to remember that – but when there was a serious debate about whether an agency distinct from the Federal Trade Commission was even necessary at all. I think it's clear to all today that capital markets today require more than just basic consumer protection. They require constant monitoring and increasingly calibrated safeguards and market stability measures.

The actions of other regulators will also inevitably bear on the assessment of new measures. Our regulatory models and those of our colleagues must recognize and address the interrelationships between financial institution and market, appropriately calibrated to both protect investors and support the risk-taking that is at the heart of our capital markets. The Financial Stability Oversight Council, FSOC, is a particularly important forum for that dialogue, but it will also be essential for the Commission to continue to engage in the full array of forums in which it engages, domestic and international. Modern financial markets cut across regulatory lines that were drawn in a different time, and we need to have the assertiveness, flexibility, and open-mindedness to continue to play a leadership role at the SEC in the broader financial regulatory regime.

Our independence at the SEC is vital to serving in that leadership role and doing our job optimally. The Commission has always guarded its independence fiercely, a proud history that I have defended from my very first days as Chair. Not all of our actions and views have been uniformly praised – you may have noticed. They never have been. At the core of being a good steward of the mission of the SEC is acting independently from the executive and legislative branches of government, fighting for that independence whenever necessary, and withstanding the inevitable criticism and pressure to change that follows.

Like many Chairs and Commissioners before me, I strongly believe that the agency's independence has been critical in allowing it to use its expert judgment to do what is best for investors and the markets – a task that could otherwise be rendered impossible by the whims of political pressure or the public mood. The Commission, in fact, was created as an independent agency in 1934 precisely because Congress identified a need for that strength in overseeing the American capital markets.

Of course, as Congress recognized at that time, this model does not mean – and as I have personally experienced, has not meant – an absence of oversight. Independence only works when it is matched with accountability. And, we are held accountable. We are subject to annual appropriations from Congress, regular public oversight, and an established body of law – centered on the Administrative Procedure Act – dedicated to preserving due process. The courts have also not been shy about holding us to account under the law.

You know, perhaps a bit paradoxically, our independence also depends on hearing regularly from a wide range of constituents with extraordinarily diverse perspectives. Across our many activities, the Commission gathers input from investors and other market participants, representatives from throughout the government, advocacy and industry groups, public commentators, international counterparts, and many, many others. This approach is certainly time-consuming, but it allows us to evaluate all perspectives on an issue and make the best decisions possible within our authority.

The extraordinary vitality of the American capital markets, I believe, testifies to how well the Commission's independence has served investors and the economy over the years. The choices ahead for the agency – some of which I've described today – will not be easy. Continuing to build an effective post-crisis market regulator will mean imposing measures that sometimes draw sharp outcry from interest groups, and will mean modifying or eliminating measures that – despite strong public support from other groups – are no longer serving investors well.

You know my tenure has certainly been marked by hard decisions that have attracted criticism from both political parties. We have been accused of both gutting regulation and suffocating the market with too much of it. A few have attacked us for letting the crooks off with a slap on the wrist, while others say we are too tough and have targeted others simply to pump up our numbers. In short, the environment necessary for independent agencies to be able to do the jobs you all want us to do is not getting any better or easier. Indeed, recent trends have even raised the question of whether or not the independence of the SEC can be preserved at all.

One of the most prominent trends is toward increasingly specific statutory mandates – and lots of them. It is entirely appropriate for Congress to act to change the mission of the Commission or broadly direct the agency to address a new risk or market condition. But the highly prescriptive mandates that we see today, which tell us exactly how we should act, are much different. This prescriptiveness frustrates the agency's ability to exercise its expert discretion effectively, ultimately also undermining the goal of the congressional mandate. You know it's very eye-opening to actually contrast the broad directives of the 1975 Securities Acts Amendments with the highly detailed requirements set forth in the Dodd-Frank and JOBS Acts. I will say that the phrase – "ah, those were the days" – does come to mind when you do that. But it's worth doing, I think, to sort of see what the baseline is or ought to be.

Another current trend pushing against the independence of the Commission are the legislative proposals from Congress seeking to remake our rulemaking process. The House passed a bill just last week that would impose conflicting, burdensome, and needlessly detailed requirements regarding economic matters in Commission rulemaking that would provide no benefit to investors beyond the exhaustive economic analysis we already undertake. These requirements would also prevent the Commission from responding timely to market developments or risks that could lead to a market crisis. And elements of the CHOICE Act, which could be re-introduced this session, would similarly undermine agency rulemaking as well as cripple our enforcement capabilities. The next Commission must continue to challenge these efforts, and so should all of you.

You know, these trends and similar ones create real consequences for the efficacy of the Commission, as well as for other independent regulators. Most visibly, they tend to increase polarization within the Commission and make it harder to forge consensus. The strength and utility of the agency's structure depends on an environment that rewards expertise and frank dialogue, not partisan affiliation and political games. If the ability and resolve of Commissioners to act independently diminishes, so too will the opportunity for solutions that, while politically unpopular, best serve investors and the markets. The agency depends on being able to consider all views and facts in making an expert assessment, which can be foreclosed by increasingly detailed statutory requirements or unthinking partisanship, whether by Congress or by Commissioners. If the SEC's discretion is not meaningfully preserved, it would be to the significant detriment of both investors and the markets. Even a bipartisan Congress – should there be one – would not be nearly as well equipped to study and conclude the range of technical issues that are inherent in nearly every one of the SEC's regulatory actions.

The present moment is a delicate one. The post-crisis Commission has been revitalized and remains the investor's strongest advocate, but it is more susceptible than ever to the erosion of its expertise and authority by the partisan tides. It will remain independent – and therefore be able to meet its broad range of critical responsibilities – only with Commissioners equipped and motivated to act expertly and with only our mission in mind. It will also be up to others, including Congress, to offer an unwavering defense – not of the SEC's actions – but of the agency's independence and the right of the Commission to exercise it to further our critical mission.

I believe today's SEC is deserving of that strong defense. And I believe that Americans across this country are clearly deserving of a Commission that is empowered to independently carry out its unique and critically important obligations to investors and to our capital markets. Thank you for listening. (Applause)

QUESTION AND ANSWER PERIOD

CHAIRMAN TERRY J. LUNDGREN: Thank you Chair White. It gives us a lot to think about. We're now going to move to the question and answer portion of our meeting. And to accommodate us, we will have Ali Velshi, who is the MSNBC anchor, of course, and NBC correspondent, as well as Ed Cox, who is Secretary of the New York Economic Club. And he is a retired partner of Patterson Belknap Webb & Tyler. Ed, the first question goes to you.

EDWARD F. COX: Terry, thank you very much. And Madam Chair, thank you very much for being here, for your stewardship of the SEC and its responsibilities and mandate, and for your detailed presentation, which I'm sure the horde of commentators who follow the SEC will be picking apart for a long period of time, and for also being a dedicated and outstanding public servant.

CHAIR MARY JO WHITE: Thank you very much.

EDWARD F. COX: And that really leads to my question, because you have been both a U.S. Attorney and now the SEC Chair, and of course a securities lawyer. So you're in a unique position to compare and contrast the respective abilities of the Justice Department and the SEC to enforce our securities laws. What are their roles? And to what extent do they compete?

CHAIR MARY JO WHITE: Very good question. I mean I've said before, I was waiting – not with bated breath – for someone to give me the criminal powers as the SEC Chair, and I would have loved to have had them. Because there's nothing as strong in terms of deterrent value obviously than, you know, in an appropriate case, for an individual anyway, you know, the threat of actually imprisonment. So when I was U.S. Attorney we had a very, very close working relationship with the SEC. And often when you would have, for example a recidivist, who kept coming back and coming back after one SEC action after another, we would go to our...they would come to us as a criminal counterpart to say, okay, the elements of a criminal securities fraud, which are in general almost the same as a civil securities fraud, we really need the greater weight of the criminal authorities in this. And, you know, like I think that worked extraordinarily well then. I think if you compare when I was U.S. Attorney in the late 90s, early 2000s, to now, there are about twice as many cases, securities fraud cases, brought criminally as there were when I was U.S. Attorney. The other big change is that the SEC works in parallel with criminal authorities all over the country. It used to tend to be mostly the Southern District of New York

U.S. Attorney's office. Now you really have district attorneys, attorney generals, and lots of U.S. attorneys who partner with us. So if we, you know, come across as we often do, not in every case by any means, serious enough conduct that we think warrants a criminal look at it, we will refer that information to the criminal authorities and then continue to appropriately work together, you know, on the cases. We bring a number of cases together in parallel, you know, timing-wise. We do take care, by the way, that we're not basically, you know, collecting twice in a sense. So in other words, you know, take FCPA, which many of you are familiar with, the Foreign Corrupt Practices Act, that's both a criminal statute and a civil statute. And we work in parallel almost all the time, although the SEC works independently too, with the Department of Justice. And if we bring a case, if you look at how sort of the sanctions, you know, are levied, the SEC will often take money for disgorgement, ill-gotten gains of the company who may have violated that law, but not assess a penalty. Whereas DOJ will assess the penalty. I mean it's a very strong combination, but it's not, I think inappropriately punishing twice for the same offense. So it's, you know it's a very important partnership. The one thing that I think, and I didn't understand it fully, and I should have frankly from working at the SEC and in the private sector, just how important the SEC's enforcement authority is, what I call coverage. So, for example, when all the insider trading, the criminal insider trading cases were being prosecuted – still are – but, you know, by my successor, Preet Bharara, you know I think he had 75 out of 75 at one point when I was remarking on this, in terms of convictions. That's a lot of criminal insider trading cases. That's a lot of leverage, as I've just alluded to. But in that same five-year period, the SEC brought 600 cases. And so we bring our cases against the range of offenders. And that's really,

really important to an honest marketplace. So it's a very important component, certainly the SEC's enforcement program, to work in parallel in appropriate cases, but the vast majority of our cases are still stand-alone.

ALI VELSHI: Madam Chair, thank you for your substantive comments. One of the things you said in your comment was that one of the roles you think is really important for the SEC is to preserve the ability for investors to take risks, which an unusually heavy hand would threaten. You also referred to suffocating the market. Now you fairly said that you've received criticism from both sides. Focus on one of them, and part of me wishes this was 72 hours from now, but you can answer in the present or the future.

CHAIR MARY JO WHITE: I have another speech on Monday.

ALI VELSHI: Yes, there we go. Maybe I'll try and be in San Diego. Jay Clayton, the nominee for SEC Chair, back in 2011 wrote a report. This was obviously before your tenure. But in it he criticized the SEC for zealous enforcement of laws intended to prevent American corporate corruption including the SEC's anti-bribery regime. He said it was causing lasting harm to the competitiveness of U.S. regulated companies and U.S. capital markets. Is there anything in that critique with which you agree in terms of the balance that you say the SEC needs to achieve?

CHAIR MARY JO WHITE: He'll learn. No, seriously, by the way, I know – to a degree from before – Jay Clayton, who is the nominee as my successor and I've spent some time with him and really am quite impressed by him. I mean he's very smart, very thoughtful, very knowledgeable about the markets and the securities laws, and just a terrific person. So if confirmed, as they say in the parlance of Washington, I think he'll be a terrific successor. I think, look I think, for one thing I do think you do learn when you get sort of exposed to the, you know, the range of conduct that you're charged with overseeing and enforcing if there have been violations. I mean I've heard more than one commissioner, you know, comment after they've sat through weekly closed meetings, that's when we just sort of decide whether the staff's recommendation to bring in the enforcement act should be approved or not and just sort of see the range of awful conduct that's out there that really does harm, you know, investors, you know small and large, that you, you know you learn from that in terms of sort of what's needed in terms of the strength of the enforcement program. And I think the report you're alluding to was written as part of a Bar Association Committee in 2011. And I think, you know, among the points being made there, I think the landscape has changed for one thing. For example, I think other countries are today much more vigorous in enforcing their own corruption laws. That's a very good thing obviously for the integrity of the global marketplace and also frankly, you know, to respond at least in part to the concern about competitive disadvantage, I do think it's very important and you've seen it in our cases and the Justice Department cases, to be very strong in that space. But I do think the landscape has changed in some of the ways actually foreshadowed in Mr. Clayton's report.

EDWARD F. COX: You mentioned in your presentation the JOBS Act as one of your big challenges when you came on board. It became law in 2012 with very strong bipartisan support. After all, who can be against jobs, right? And you pledged to complete the Herculean task of the act's mandatory rulemaking, which indeed you did with the last regulation on crowdfunding going into effect last May. So how is the JOBS Act doing? Is the unusual bipartisan enthusiasm for it justified? Or is it, as some commentators said, legalized boiler-room operations?

CHAIR MARY JO WHITE: Those are contrasting positions. I told you we get our points of view from widely ranging perspectives and viewpoints. Look, I was extremely pleased to complete the JOBS Act mandate. So I think it basically provides, you know, new ways of raising capital, particularly for smaller businesses. I mean the two, you mentioned crowdfunding, we also really rather dramatically revised what's called Regulation A, you know for smaller offerings that do get reviewed by the SEC. It's a little early to say how well they're working. Regulation A, as revised, has been in effect longer and we're very pleased to see the number and the kinds of offerings in that space. I think we had one issuer who basically said, look, without Regulation A I would not have been able to finance this venture at all. And so we're getting some very good feedback on it. Crowdfunding, we've had a range of issuers. You know, this is kind of a different issuer than the SEC is used to overseeing. They're much smaller and, you know, they range in products from A to Z in some ways. And so we've had a number of offerings that are relatively small and then there's obviously a cap on the size that you can raise in a given year. One of the things that I decided to do once I sort of studied – very early on actually – studied the landscape of particularly the JOBS Act, is that these are really fundamental changes in the way markets operate to some degree and the way we regulate and oversee these markets. And so what I've set up at the SEC is, you know, inter-divisional working groups, enforcement exam, corporation finance, investment management, sort of all of our divisions who have anything to say about any of this, to see as soon as those new regimes are set up and effective, we're there. So we're not waiting two years to say, gee, was there really this boiler-room, lots and lots of fraud out there? And by the way, we've not seen that yet. I mean one of the other JOBS Act provisions was to lift the ban against general solicitation, you know, of certain private offerings and so we have a group that's assigned to that. It doesn't mean it won't happen down the road, but we're certainly there. We haven't seen it yet. But because we're there coming out of the gates, it both allows us to see whether there are problems we need to address to protect investors more strongly, and is it working? You know, are we actually getting new capital being raised? Some of it may be using one device instead of another. So we're studying that, our economists are studying that very closely, so that we're in a position to make changes to help all three parts of our mission but particularly obviously investor protection and the facilitation of capital. So it's a little early to say, but very pleased to get them completed, very pleased we're watching them carefully. But also pleased to see that there's quite a bit of uptake.

ALI VELSHI: Madam Chair, to your first answer, the public takes a certain satisfaction in seeing regulatory agencies hold companies and executives to account for things that they've done that are wrong, but sometimes – and this is a tough one to square – regulatory enforcement often targets shareholders who have assumed that risk but had nothing to do with the bad acts. And it feels sometimes like it fails to get to the heart of who committed the bad acts and whether or not they should specifically pay as opposed to spreading the cost of the sin across shareholders. How do you deal with that? How do you think about that?

CHAIR MARY JO WHITE: Well, let me talk first as a prosecutor and as an enforcement, you know, lawyer and a government official of the SEC. I think there's nothing as important for deterrence and frankly for punishment as well than proceedings against individuals when the evidence is there to bring, you know, those charges, in addition to – often – charges against companies. So, for example, during the financial crisis, you know, the SEC, again we're civil not criminal, but you know, we brought, I don't know, 280 defendants – entities and individuals were charged. And about 90 of those were senior corporate executives. So I mean, I think, SEC has always had a very strong record in bringing its actions against individuals. Now we also have negligence-based charges, not just pure fraud, and strict liability offenses that may only be available against companies. I think where you get into the controversy is really on corporate penalties. And so when the Justice Department or the SEC or any other regulator assesses a big corporate penalty and let us assume it can go either way, there hasn't been a big benefit to the company itself from whatever the fraudulent activity is – often there has been, by the way – I think it's a little bit different analysis, you know, who are we punishing? Now at the SEC we have something called the Fair Funds Authority, so that when we get money and penalty dollars from a company, we can put it into a Fair Fund and give it back to the shareholders who were harmed, so that obviously mitigates that. My own view on this, and there are a range of opinions on this, is that I think it's a very important tool to have, to bring significant and assess significant corporate penalties, really for deterrent value, and you heard in my introduction, having been a member of a board, nothing quite gets the board's attention than, you know, having the Justice Department or the SEC say this is really serious conduct. We're not only bringing charges against the company but we really, this is serious enough that we think it deserves a Tier 3, Tier 1, whatever penalty it is. So I think you need to be modulated in what you do. We certainly consider, by the way – in a case where there hasn't been a benefit to the corporation in a particular matter – are we going to harm innocent shareholders with this? That's a factor we consider. But I think you've also got to look very closely at the deterrent value. And so I think it's an important tool in the arsenal to be used, you know judiciously used, another word from my remarks. But aggressively. Monday, I might say, you know, judiciously...no, no...

EDWARD F. COX: At some point fairly soon, you'll be sitting down with your successor and you'll face your successor and you'll want to say something and you only have a short time to say it. What will you say to that person?

CHAIR MARY JO WHITE: You'll never learn that. No, seriously, first, I have sat down with who I believe to be my successor and really just informationally more than...like I'm actually not a big advice giver to my successors. I mean I think what you, I mean I certainly believe in providing the full range of knowledge to my successor. I mean some things are more apparent than others when you take upon the chairmanship of one of these independent agencies and I want to make sure my successor knows the full range of, you know, those issues, and then he or she decides how they want to handle that. You know, look, I think to give advice, it's, you know, be true to yourself and be true to the SEC mission, and listen very carefully to that senior staff and those you particularly trust on that senior staff for what they think ought to be done. I mean you have so many different, such a vast array of responsibilities in the SEC, I mean you can't imagine how diversified and complex they are. No chairman, no commissioner is going to be a master of all of those, or even most of those areas. And so you're going to have to rely on, decide who you're going to rely on, you know, views from outside, experts, and the SEC has more and more market experts inside, about what to do about certain areas. Don't ever make the mistake of thinking, well, gee, I can really start from square one and just sort of get this right when you really have a learning curve that you've got to come up. So those would be kind of the three thoughts I would have.

CHAIRMAN TERRY J. LUNDGREN: Thank you very much, Chair White, for your comments. Thank you Ed. Thank you Ali. We want to wish you all the very best in your next endeavor. (Applause) The next meeting of the Club will be February 7 and that will feature Roger Ferguson, many of you know, the former chair of the Economic Club of New York and current chair and CEO of TIA. And he will moderate a breakfast panel on the future of capitalism followed by February 16, a luncheon by Dr. Alan Greenspan. And at that time, he will receive the Economic Club of New York's Leadership Excellence Award. Then on March 14, the Club will be hosting Doug McMillon, who you may know is the President and CEO of Walmart, the largest company in the world and we think that obviously impacts our economy and so we'll be interested to hear what Doug has to say. And then Ruth Porat, who also many of you know from her involvement here, is the now CFO of Alphabet, the parent company of Google. She'll be here to speak on May 22. And then later this spring, we also have an agreement with Howard Schultz of Starbucks, Chairman and CEO, to come speak to us. We're just working on the date with Howard, and the same with Steve Ballmer, former CEO of Microsoft. So we've got a great lineup of events that will be continuing. So for now, enjoy your lunch and thanks for being here. (Applause)