

In His First Speech as Chairman, Clayton Presages Few Major Changes at the SEC

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Jay Clayton's first public speech on Wednesday as Chairman of the SEC foretold few, if any, sweeping regulatory changes at the Commission. His [remarks](#), delivered to the Economic Club of New York, outlined eight principles that will guide his approach to regulation, which included support for the agency's historic disclosure and materiality-based regulatory regime, a commitment to protect the long-term interests of retail investors, and an endorsement of a strong enforcement program.

While Chairman Clayton's speech is worth reading in full to understand how he might act in his new role, we found a few elements of the remarks and the Q&A (co-led by Annette Nazareth), worth highlighting:

- Not surprisingly, given his background as a capital markets lawyer and his prior statements to Congress, Chairman Clayton is keenly focused on the process of capital formation, emphasizing the increasing cost (with arguable benefit) of disclosure standards and his desire to provide retail investors with opportunities to invest in profitable and growing companies that are increasingly turning to private capital. He touted the recent expansion by the SEC of the JOBS Act approach of permitting issuers to submit draft registration statements confidentially as a means of encouraging companies to access the public markets.
- Chairman Clayton also addressed market structure issues. He anticipates renewing the charter of the Equity Market Structure Advisory Committee and supports a pilot program concerning access fee caps in order to study how changes to the caps might affect equities trading. Given the importance of fixed income products to the retirement accounts of an increasing population of Baby Boomer retirees, he also called for the creation of a Fixed Income Market Structure Advisory Committee to explore “whether [fixed income] markets are as efficient and resilient as we expect them to be...”
- Chairman Clayton noted that he is committed to close coordination with the CFTC in order to achieve greater harmonization of the rules concerning swaps and security-based swaps. We believe that his remarks implicitly indicated a commitment to complete these Dodd-Frank rulemakings.
- Chairman Clayton said little about the DOL Fiduciary Rule, other than to say that it will be important for the SEC to bring “clarity and consistency to this area.”
- Cybersecurity was also an area of focus. He acknowledged the obligation of public companies to disclose material information about cyber risks and cyber events, and noted that the SEC should be cautious about punishing responsible companies that are the victims of cyberattacks by sophisticated actors. It remains to be seen whether state regulators such as New York's Department of Financial Services will take a more aggressive enforcement approach.
- In a question and answer session following his remarks, Chairman Clayton was asked whether the SEC would institute any programmatic changes relating to the Foreign Corrupt Practices Act, given his earlier criticisms of the FCPA. Chairman Clayton indicated that he does not foresee any changes to FCPA enforcement during his tenure. He clarified that his earlier criticism focused primarily on the disparity that existed several years ago between aggressive U.S. enforcement and that of other jurisdictions and the competitive impact that had on U.S. corporations, a situation that he sees as having improved with greater non-U.S. enforcement of anti-bribery statutes.

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