FINANCIAL SERVICES AND GENERAL GOVERNMENT APPROPRIATIONS FOR FISCAL YEAR 2014

TUESDAY, JUNE 25, 2013

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 3:11 p.m., in room SD–138, Dirksen Senate Office Building, Hon. Tom Udall (chairman) presiding.

Present: Senators Udall, Coons, Johanns, and Moran.

COMMODITY FUTURES TRADING COMMISSION

STATEMENT OF HON. GARY GENSLER, CHAIRMAN

OPENING STATEMENT OF SENATOR TOM UDALL

Senator UDALL. We are going to bring the subcommittee to order. I am pleased to convene this hearing of the Financial Services and General Government subcommittee to consider the fiscal year 2014 funding request for two key Federal regulatory agencies, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC).

I welcome my distinguished ranking member, Senator Mike Johanns, and our colleagues here today with us, and others who also may arrive in a little bit.

Joining us today are the Honorable Gary Gensler, the Chairman of the Commodity Futures Trading Commission, and the Honorable Mary Jo White, the Chairman of the Securities and Exchange Commission. They will discuss the critical work of their agencies, share how they have used the resources provided over the past couple of years, and explain the details of their budgetary needs for fiscal year 2014.

The subcommittee has received a statement for the record from Colleen Kelley, President of the National Treasury Employees Union, regarding the funding for the FCC. If there's no objection, I'd ask it be included in the record of these proceedings. Great. It will be included in the record.

[The statement follows:]

PREPARED STATEMENT OF THE NATIONAL TREASURY EMPLOYEES UNION

Chairman Udall, Ranking Member Johanns and members of the Subcommittee on Financial Services and General Government Appropriations, thank you for the opportunity to present this statement on behalf of the National Treasury Employees Union (NTEU). Our union is proud to represent the bargaining unit staff at the Securities and Exchange Commission (SEC).

The employees of the SEC are among the most professional, hard working and dedicated of any in the public or private sector. The rapidly changing practices in the financial markets as well as new forms of fraud and wrongdoing mean that SEC must continue to recruit and retain employees with the highest level of skills. Commitment to this goal will mean that fraud will be reduced and investors, savers, retirees and others who participate in the market will not be victimized by those who would do them financial harm.

NTEU supports the administration's overall request for $1.674 billion for fiscal year 2014 in funding for the SEC. This funding level is critically important to allow the employees of the SEC to perform their work in an effective and professional manner. With the Dodd-Frank law and other legislation, Congress has given the SEC important new duties in protecting investors and the public. For that reason, the additional staffing called for in the administration's request is both reasonable and needed. I would remind the subcommittee that SEC funding is deficit neutral. While the appropriations process allows this subcommittee to give important oversight to the SEC, the agency is not funded by tax revenue but is fully funded by fees paid by the industry which are adjusted to cause no negative impact on the Federal budget deficit.

I want to particularly emphasize the importance of the administration's request in two key areas that currently are understaffed. While the SEC has proposed or adopted 80 percent of the rules mandated under Dodd-Frank, work remains for 20 percent of the mandated new rules, including some complex matters. NTEU supports the administration's request for funding of 45 new positions in the Division of Risk, Strategy and Financial Innovation. This is highly skilled work and it is essential that SEC have the right number of staff and that they be people of superior qualifications.

Second, the core of SEC's work is in enforcement and examination. This is where the bad actors are caught and punished and the innocent protected. The administration's request is for an additional 131 FTEs in the Division of Enforcement. No less than this should be funded. But this is not just a matter of staffing levels. Two other actions would enhance the effectiveness of SEC's enforcement and examination functions. First is training. The fiscal year 2014 budget request asks for a meaningful increase in its training budget with a priority on training for employees engaged in examinations and investigations. NTEU strongly supports this. SEC's employee training program falls behind the other Federal financial regulatory agencies where NTEU represents the employees. It needs to be brought up to par.

Also of importance is how SEC is structured. In March 2011 SEC management began looking at ways of restructuring field operations. Contrary to proposals that there be office consolidation, NTEU found that the evidence is SEC would actually benefit from an increased number of field offices, specifically in the midwest, southwest, northwest and mid-Atlantic areas. Not only could this be economical due to more moderate office space costs in these places, but NTEU members at SEC strongly believe that geographical proximity of SEC staff to situations of fraud and wrongdoing has a strong impact on enforcement and discovery. SEC should give serious consideration to the opening of new field offices in parts of the country that are underserved or suffer from investment fraud above the norm.

Limitations on employee investigatory travel budgets also harm the ability of SEC front line employees to do their job in an effective and professional manner. Employees at the SEC believe the importance of this work will become increasingly critical in the near future. For example, because of low returns in the bond market in which many people have their post-retirement savings concentrated, retirees are increasingly looking for new investments promising higher returns. While some senior citizens may find the higher yielding investments they are seeking, others will become victims of fraud and Ponzi schemes. Without proper SEC staff in numbers, quality, training and mobility, we will see an increasing number of seniors at risk of being cheated out of their retirement savings and investments. Seniors should not lose their retirement savings to unscrupulous advisors because of an understaffed or weak SEC.

NTEU appreciates the opportunity to present our views to the subcommittee and hopes to continue to work with the Chair and the members of the subcommittee on SEC funding as well as other matters under the subcommittee's jurisdiction. Thank you.

Senator UDALL. The responsibilities of these agencies have grown dramatically over the past 3 years. The CFTC and the SEC both have pivotal roles to play in stimulating and sustaining economic growth and prosperity in our country and protecting the market-

place from fraud and manipulation, and in implementing Dodd-Frank reforms.

During the debate on Dodd-Frank, and as we work through its implementation, my constituents have made clear that they support these reforms. The hardworking and honest people of New Mexico want us to prevent the reckless and abuse practices that contributed to the financial crisis.

While some sectors of our economy are recovering, many families have not. They continue to struggle, and I believe it's my responsibility to them and to all Americans who suffered as part of the crisis to ensure that we work to fully implement Dodd-Frank. We need a financial system that is safe and sound, because what happened on Wall Street touches every American family. Whether they are putting away a little something to buy their first home or helping put their kids through college, or are planning for retirement, they put their faith in our financial markets and we cannot let them down.

They are not the only ones. Market users, financial investors, and the U.S. economy all rely on vigilant oversight by these two agencies, especially in today's rapid-paced, evolving, and often-volatile global marketplace.

It's clear that both Chairman Gensler and Chairman White and their fellow Commissioners and their staffs have devoted many hours toward a more reliable regulatory structure, one that will ensure the stability and integrity of the futures and securities markets. We depend on your leadership to effectively implement the comprehensive reforms designed to strengthen our regulatory framework.

The CFTC carries out market surveillance, compliance, and enforcement programs in the futures and swaps arena. It detects, deters, and punishes abusive trading activity and manipulation of commodity prices, preventing negative impacts on consumers and the economy. The CFTC regulates the activities of over 62,000 salespersons, commodity pool operators, trading advisors, and brokers.

Currently, the CFTC has criteria for trading futures or options or both. In addition, 17 derivative clearing organizations are registered with the CFTC. Adding to the challenge of your mission is a significantly transformed and highly diversified marketplace, a marketplace that is globalized, electronic, and around-the-clock. Three years ago, and that mission was substantially expanded to embrace oversight of the swaps marketplace and the vast once-in-the-shadows world of the over-the-counter derivatives.

As the investors advocate, the SEC also has crucial responsibility to maintain fair, orderly, and efficient stock and securities markets. The SEC conducts day-to-day oversight of the major market participants, monitors corporate disclosure of information to the investing public, and investigates and pursues enforcement action against security law violation.

To fulfill its duties, the SEC monitors approximately 35,000 entities. These include 11,000 investment advisors, with $44 trillion in assets under management, 9,700 mutual funds and exchange-traded funds, and 4,600 broker/dealers with more than 160,000 branch offices. The SEC also is responsible for reviewing the disclosures

and financial statements of approximately 9,500 reporting companies and oversees approximately 4,600 transfer agents, 17 national security exchanges, 8 active clearing agencies, 10 nationally recognized statistical rating organizations, and 4 oversight boards.

Like the CFTC, the enactment of the Dodd-Frank Act 3 years ago dramatically expanded the SEC's responsibilities. You were thrust into the driver's seat for issuing 100 new rules, creating 5 new offices, producing more than 20 studies and reports, overseeing the over-the-counter derivatives market and hedge fund advisers, registering municipal advisors and security-based swap market participants, and creating a new whistleblower program, among other new duties.

To jumpstart our Business Startups Act of 2012 added more to the plate, directing the SEC to write rules and issue studies on capital formation, disclosure, and registration requirements. Now, looking ahead for 2014, the President seeks funding of $315 million for the CFTC, an increase of $110 million, or 54 percent, over fiscal year 2013, the enacted level of $204.8 million, not including sequester.

Under sequestration, the CFTC is currently operating at $194.5 million, significantly below the $308 million requested for fiscal year 2013 and recommended by this subcommittee. For the SEC, the President's fiscal year 2014 budget seeks base funding of $1.674 billion. This is an increase of $353 million, or 27 percent above the fiscal year 2013 base enacted level of $1.321 billion, not including the sequester amount of $66 million.

The SEC has slightly over $100 million in unobligated balances to further support its operating expenses this year, which helps mitigate some of the effects of sequester. But the total funding available still falls far short of the $1.566 billion requested for 2013 and that this subcommittee has recommended.

Congress probably exercises its most effective oversight of agencies and programs through the appropriations process, allowing an annual checkup and review of operations and spending.

Today's hearing provides a valuable opportunity to ask some important questions. Are the CFTC and the SEC keeping pace with the developments in the markets, particularly with new, more complex financial products? Do the agencies have the right mix of talent and specialized expertise to be vigilant watchdogs? Do they have nimble state-of-the-art information technology to augment and support their human capital? What are the likely consequences of continued budget shortfalls and reduced resources?

And I welcome the opportunity to conduct critical oversight of these two agencies and look forward to a candid discussion of where they are today and where they need to be, more robust and responsive regulators, and how we can work to provide resources they need to satisfy their vital missions. It will be helpful to hear from both Chairmen, to have their honest appraisals about the resources that they will require to achieve their missions to keep pace with change and to responsibly manage taxpayer dollars.

And so with that, I want to recognize my very distinguished colleague from the State of Nebraska, my ranking member, Senator Johanns.

STATEMENT OF SENATOR MIKE JOHANNS

Senator JOHANNS. Thank you, Mr. Chair. And let me just say how much I appreciate you calling this hearing today.

To both chairs, welcome. As we review the budget submissions for the CFTC and the SEC for 2014, I look forward to hearing the detail of your request and your plans to carry out your core missions and implement Dodd-Frank in a timely and responsible manner.

To Chair White, I believe this is your first time since you've been confirmed? Well, we welcome you. I understand you're just getting settled in. I appreciate you stopping by the office the other day, appreciate that immensely.

There are three areas I'd like to highlight for you. First, I do encourage you and your team to move with all appropriate speed implementing last year's JOBS Act. Rulemaking for Regulation A, plus crowdfunding and general solicitation, are all behind.

Second, I urge the Commission to take a holistic, robust look at our current market structure. I hope you can identify places where tweaks and modernization are necessary before the next major market malfunction, instead of continuing down a path that someone described as "reactionary."

Finally, I will ask you to be persistent in trying to work with your fellow regulators, who would prefer to go it alone as opposed to coordinating with the SEC. In my judgment, it is completely unacceptable that this year could end with conflicting SEC, Department of Labor fiduciary standards and with uncoordinated SEC, CFTC cross-border swaps regulatory regimes.

Chairman Gensler, as you have said, and I'm quoting here, "Derivatives markets and effective oversight of those markets matter to corporations, farmers, homeowners, and small businesses." Could not agree more. We all benefit from effective oversight that promotes fair and orderly derivatives markets.

In some instances, however, the CFTC has moved too quickly, and others the Commission has simply chosen to issue guidance. And I'm critical of that, because it often looks to someone in my position as a United States Senator that this is just skirting the cost/benefit analysis. In many cases, the commission has opted to act alone instead of properly coordinating with the SEC, as well as other domestic and international regulators.

It was especially troubling to discover that you have been on your personal email account. I encourage you to stay away from that. Conducting business on a personal email account is a bad idea.

In order to be an effective regulator, transparency is critical. This need for transparency and coordination could not be clearer in the CFTC's approach to cross-border implementations swaps regulation. The CFTC's guidance, the delays, the lack of coordination with other regulators have led to confusion and concern from market participants, foreign government finance ministers, and investors both here and abroad.

Now, in reviewing the budget requests of both the CFTC and SEC, we recognize that protecting investors is paramount, as they look to the markets to help secure their retirements, pay for their

homes, and send their kids to college. However, our budget deficit and fiscal restraints require all agencies to make decisions as to how to best allocate resources.

Technological solutions are necessary to keep up with the next-generation trading platforms in systems that operate at record-breaking pace. Staffing levels have to be carefully considered so that they do not become unsustainable. But this is not really a new challenge.

All agencies have to make strategic decisions on where the resources go. Simply increasing funding doesn't necessarily ensure that an agency will successfully achieve its mission, as we all know.

So, to the chairs, you both have difficult tasks before you. You must improve transparency in our securities markets, uncover fraud and deception, while not over-regulating our markets and hindering our economic recovery. Some would argue that's nearly an impossible task.

Chairman Udall, I look forward to working with you as we consider the fiscal year 2014 budget request of the CFTC and the SEC. Thank you.

Senator UDALL. Thank you very much, Senator Johanns.

At this time, I invite Chairman Gensler to present testimony on behalf of the CFTC, followed by Chairman White on behalf of the SEC. We would ask that you try to keep your statements to 5 minutes, and your full statements will, obviously, go on the record. And then after that, we will probably have a very lively discussion here. And we'll go to members' questioning with the 7-minute rounds. Please proceed.

Mr. GENSLER. Good afternoon, Chairman Udall. Congratulations on taking over the chairmanship.

Senator UDALL. Thank you.

SUMMARY STATEMENT OF HON. GARY GENSLER

Mr. GENSLER. Ranking Member Johanns and Senator Moran.

And I'm pleased to be here for the first time with my new friend and colleague, Chair Mary Jo White.

The CFTC's mission, as you both mentioned, is critical to so many hedgers: the farmers, ranchers, community bankers, insurance companies, mortgage brokers, really anyone who wants to lock in a price, hedge that risk, and then focus on what they really do best, which is investing in the economy and promoting job growth.

The CFTC dates back to the 1920s when we were part of the Department of Agriculture. We weren't there when Senator Johanns ran the Department. We became independent in 1975, and until last year we only oversaw the futures and options market.

Congress then directed the CFTC and SEC to take on the significantly expanded mission to oversee the swaps market, something technically called "swaps" over at the CFTC, "securities-based swaps" at the SEC. These were at the center of the 2008 financial crisis.

Now, with most of the swap market reforms completed at the CFTC, this is with over 90 percent of the rule-writing completed, this small agency has now taken on not only overseeing futures, but overseeing swaps, and the swaps markets that we oversee is

over 90 percent of the jurisdiction. The futures market is actually, as critical as it is, only about 10 or 11 percent of what we oversee. That's because the swaps market is about $300 trillion, or about $20 of derivatives for every dollar in our economy.

Until just recently, the swaps market was closed and dark, but now we have transparency. The public can view the price and volume of transactions on websites, DTCC's website and CME's websites, and elsewhere. And soon, swaps will be traded on transparent platforms. This transparency, I think, helps the entire economy.

We now have 78 registered swap dealers, a group that includes some of the largest domestic and foreign banks around the globe. Senator Johanns asked about our cross-border guidance that we're seeking to complete by July 12. I'm optimistic. I think that we can and should complete that final guidance by July 12.

Swaps are also coming into something called central clearing. Now, central clearing helps access to the market, makes it more competitive, and also lowers the risk of the marketplace. I do think that we must address these cross-border applications of the reform; it's critical because the far-flung operations of U.S. financial institutions must be included in reform.

Just as the risk of our housing crisis went over to Europe and elsewhere in 2008, we also saw risks crashing back on our shores when AIG financial products and other firms that were operating offshore collapsed, their risks came back here and our taxpayers were left holding that risk.

Congress knew that when they crafted the law. They said that if activities had a direct and significant connection back here at home—and the words are "direct and significant connection with activities or effect on commerce in the United States"—we should cover it. And that's what we're trying to do by July 12.

Otherwise, if we don't cover it, if we follow what some U.S. financial firms are saying, and they say they should have a free pass on reform if it's business done in one of their offshore affiliates or if it's a hedge fund operating here in the United States, but incorporated in the Cayman Islands, I think we've failed to protect the public as the Congress and the President came in and asked us to do. We wouldn't have done what you wanted us to do.

We're about 689 people today. That's only 9 percent bigger than we were 20 years ago. And of course, we now cover the swaps market as well. The President has asked for $315 million, or about 1,015 people. That's to cover markets eight times the size of the futures markets. We do need additional technology as well. Technology and staff are how we can effectively promote transparency, how we can monitor for customer funds, how we can ensure that the vast number of newly registered market participants have their answers questioned, and that we can really police and enforce what you've given us to do.

Just one example, the London Interbank offer rate LIBOR, we found misconduct along with the Department of Justice and good help from the SEC. The U.S. taxpayer's Treasury collected $2 billion in fines in the last year. We did the arithmetic. That was our appropriations funding for 22 prior years, from 1990 to 2012 all

combined. It's not the way you should measure appropriations, but it does give you a sense of what we're doing.

PREPARED STATEMENT

So given the vast markets you've asked us to now oversee, we do need more people and technology to protect the farmers, ranchers, and community banks and insurance companies. And I look forward to your questions, and I thank you.

Senator UDALL. Thank you very much.

[The statement follows:]

PREPARED STATEMENT OF HON. GARY GENSLER

Good afternoon, Chairman Udall, Ranking Member Johanns and members of the subcommittee. Thank you for inviting me to today's hearing on the President's request for the Commodity Futures Trading Commission's (CFTC's) fiscal year 2014 budget. I'm pleased to testify along with Securities and Exchange Commission (SEC) Chair Mary Jo White.

This hearing is occurring at an historic time in the markets because under Congress' direction, the CFTC now oversees not only futures markets that we have overseen for decades, but also the swaps market. The SEC oversees the security-based swaps market. The CFTC has completed 90 percent of the swap market reform rules required under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The public is benefiting from seeing the price and volume of each swap transaction. This information is available free of charge on a website, like a modern-day tickertape. For the first time, standardized swaps will have to be traded on transparent trading platforms. The public also is benefiting from the risk reduction and greater access to the market that comes from centralized clearing. And for the first time, the public is benefiting from the oversight of swap dealers. So far, 78 have registered and must adhere to sales practice and business conduct standards to help lower risk to the overall economy.

The marketplace is increasingly shifting to implementation of these common-sense rules of the road. Now it is all the more clear: the CFTC is not the right size for its new and expanded mission Congress has directed it to perform.

The CFTC's current funding is $195 million after sequestration. We recognize that the Federal Government is operating under a sequester and that budgets for agencies across Government require additional scrutiny. Our mission, however, has expanded dramatically. We now oversee the nearly $300 trillion swaps market. It is critical that we be resourced to promote transparency in these markets and to help protect the economy and taxpayers from risks posed by these markets. Thus, the President's fiscal year 2014 budget requests an appropriation of $315 million and 1,015 FTEs. The overall funding levels requested approximate the plan set forth in the President's 2013 budget ($308 million and 1,015 FTEs), but also take into account industry progress in implementing financial reform. Although the 1,015 FTEs requested in this budget are at the same level as for fiscal year 2013, adjustments were made across our mission activities to reflect the transition from Dodd-Frank rulemaking to swaps market oversight in 2014. Primarily, the Commission shifted its requested resource allocation to support and maintain direct examinations—a critical component of customer protection. Market events have highlighted that the Commission must do everything within our authorities and resources to strengthen oversight programs and the protection of customers and their funds.

The President's budget request for the Commission strikes a balance between important investments in technology and human capital, both of which are essential to carrying out the agency's mandate. This approximately 50 percent increase in appropriated funding includes a 62 percent increase in IT services, but only a 44 percent increase in staff.

The CFTC is dedicated to using taxpayer dollars efficiently—nearly a fourth of the overall budget request, $73 million, is for outside IT services. When the CFTC's dedicated IT staff is included, the request is $94.8 million for IT, or nearly a third of the overall budget. But it still takes human beings to watch for market manipulation and abuses that affect hedgers, farmers, ranchers, producers and commercial companies, as well as the public buying gas at the pump.

The CFTC is operating under a strategic plan for fiscal year 2011–2015. This plan raises the bar on the agency's performance measures to more accurately evaluate our progress. But the agency's performance is affected by the challenges of limited

resources. For the second year in a row, there are many goals that were not met, as are detailed in the agency's Annual Performance Report (APR). The agency will include findings from the APR in this year's revision of the strategic plan and consider the results as the agency reevaluates the allocation of resources.

Appropriations statutes for the CFTC for fiscal year 2012 granted authority to transfer funds between purposes. This authority will expire on September 30, 2013. We used the authority in both fiscal year 2012 and fiscal year 2013 to avoid furloughs or reductions-in-force that otherwise would have been necessary. In the event that fiscal year 2014 funding is provided through a continuing resolution for any period of time on and after October 1, 2013, the lapse in the transfer authority will very likely lead to a need to take personnel actions that seriously undermine the agency's ability to perform its mission.

In my remaining testimony, I will review the five areas that make up over 90 percent of our requested budgeted staff increase: registrations, examinations, surveillance and data, enforcement, and economics and legal analysis.

REGISTRATION AND PRODUCT REVIEWS

A significant task before us in fiscal year 2014 will be the continuation of registration of entities, as well as reviews of new products for both the clearing mandate and the trading mandate.

We want to consider registration applications in a thoughtful and timely manner, be efficient in reviewing submissions, and be responsive to market participant inquiries—but this will require sufficient funding. For fiscal year 2014, the President's request supports $38.9 million and 147 FTEs for these two mission areas, an increase of $22.6 million and 92 FTEs.

The estimated 200 clearinghouses, trading platforms, swap data repositories, swap dealers and major swap participants that are recently registered or may seek CFTC registration within the next year is a dramatic increase over any registration effort the agency has overseen in the past.

The Commission needs staff to facilitate the registration of the following:

—*Clearinghouses*.—Entities that lower risk to the public by guaranteeing the obligations of both parties in a transaction. We are working with four entities seeking to register as DCOs and have inquiries from others. These entities would join the 13 we currently oversee.

—*Designated contract markets (DCMs)*.—U.S. trading platforms that list futures and options and likely will start listing swaps. The CFTC currently oversees 16 DCMs, and by 2014, staff expects another three to four to seek registration.

—*Foreign boards of trade (FBOTs)*.—Regulated trading platforms in other countries that are generally equivalent to DCMs. Since the FBOT rule became effective, 20 FBOTs have filed applications with the CFTC. By 2014, staff expects an additional couple of FBOTs to seek registration with the CFTC.

—*Swap data repositories (SDRs)*.—Recordkeeping facilities created by Dodd-Frank to bring transparency to the swaps market. Three are provisionally registered with the CFTC, and by 2014, one additional SDR may seek registration.

—*Swap dealers and major swap participants*.—Under the Dodd-Frank Act, the CFTC is working to comprehensively regulate swap dealers and major swap participants to lower their risk to the economy. As the result of completed CFTC rules, 78 swap dealers and two major swap participants are now provisionally registered. This group includes the largest domestic and international financial institutions dealing in swaps with U.S. persons. Commission staff currently estimates that over time, 25–50 additional swap dealers may request registration with the National Futures Association (NFA). We'll be overseeing their registration and related questions.

—*Swap execution facilities (SEFs)*.—The new trading platform for swaps. Commission staff estimates that 15–20 entities may request to become SEFs.

The Commission approved the first clearing requirement last November. As of June 10, most financial entities were required to bring certain credit default and interest rate swaps into central clearing. Accounts managed by third party investment managers and ERISA pension plans have until September 9 to begin clearing. The Commission continues in the resource intensive review for determinations of other swaps that will be subject to the clearing mandate.

Full funding for the agency means that we will be best prepared to review the dramatic increase in requested registrations and to review swaps for the clearing mandate. A partial increase in funding means market participants will see a backlog in registrations, responses to their inquiries, and product review because we won't have personnel sufficient to review their submissions in a timely and complete manner. Flat funding means market participants will wait even longer. There will

be significant backlogs for participants seeking to register with the CFTC, as well as for the review of swaps for mandatory clearing.

EXAMINATIONS

Another critical mission for fiscal year 2014 will be more regular and more in-depth examinations of the major market participants the CFTC oversees. Examinations are the CFTC's tool to check for compliance with laws that protect the public and to ensure the protection of customer funds. The President's request would provide $44.3 million and 185 FTEs for examinations, an increase of $25.6 million and 104 FTEs. The CFTC would more than double our current allocation for this mission because the number of entities we examine is expected to more than double.

This is an area where the agency has fallen short of our goals in performance reviews. The CFTC directly reviews clearinghouses and trading platforms and will review SDRs. But while the agency reviews them directly, we don't have the resources to have full-time staff onsite, unlike other regulatory agencies that do have on-the-ground staff at the significant firms they oversee. The CFTC also doesn't do annual reviews. Clearinghouses, for instance, currently are examined on a 3-year cycle. For intermediaries such as futures commission merchants (FCMs) and swap dealers, the CFTC relies on what are known as self-regulatory organizations (SROs) to be the primary examiners. Given our lack of resources, we're only able to double check the SROs' work on a limited number of FCMs each year, and the agency can spend little time onsite at the firms. Our budget also doesn't allow us to review commodity pool operators or commodity trading advisors.

On top of the current lack of staff for examinations, our responsibilities in 2014 will expand to include reviews of many new market participants. For instance, there are currently 106 FCMs, 78 swap dealers and two major swap participants have provisionally registered, and more are expected to do so as the year progresses. More frequent and in-depth examinations are necessary to assure the public that firms have adequate capital, as well as systems and procedures in place to protect customer money. Reviews are critical to ensuring the financial soundness of clearinghouses, and ensuring transparency and competition in the trading markets.

Fully funding the increase for examinations means the Commission can move toward annual reviews of all significant clearinghouses and trading platforms and adequate reviews of FCMs and swap dealers. A partial increase for examinations means cutting back our monitoring plans for new market participants and more in-depth risk reviews. Flat funding means we will continue lacking the ability to assure the public that the CFTC's registrants are financially sound and in compliance with regulatory protections.

SURVEILLANCE AND DATA

Effective market surveillance is dependent on the CFTC's ability to acquire and analyze extremely large volumes of data to identify trends and events that warrant further investigation. For fiscal year 2014, the President's request would support $61.7 million and 174 FTEs for surveillance, data acquisition, and analytics, an increase of $18.3 million and 53 FTEs. Of the $61.7 million request, 55 percent would be directed toward IT.

The Dodd-Frank swaps market transparency rules mean a major increase in the amount of incoming data for the CFTC to aggregate and analyze. The agency is taking on the challenge of establishing connections with SDRs and aggregating the newly available swaps data with futures market data. This requires high performance hardware and software and the development of analytical alerts. But it also requires the corresponding personnel to manage this technology effectively for surveillance and enforcement.

As the CFTC also receives ownership and control information for trading accounts, the agency will have data to better detect intraday position limit violations and analyze high frequency trading.

A full increase for surveillance means the CFTC will have the ability to analyze futures and swaps data to protect market participants and the public. A partial increase would limit the agency's investments in analysis-based surveillance tools. And flat funding will limit our capacity to effectively utilize and aggregate the new data we now are receiving.

ENFORCEMENT

The CFTC's enforcement arm protects market participants and other members of the public from fraud, manipulation, and other abusive practices in the futures and swaps markets. Our efforts range from pursuing Ponzi schemers who defraud individuals across the country out of life savings; to abuses that threaten customer

funds; to false reporting of prices; to schemes to manipulate prices, including of goods, such as oil, gas and agricultural products. The Commission has opened more than 800 investigations in the past 2 fiscal years. The President's fiscal year 2014 request would provide $57.7 million and 213 FTEs for enforcement, an increase of $18.1 million and 51 FTEs.

In 2002, we had 154 people devoted to enforcement, and that number is nearly flat with our current staff of 156. This staff has been called upon to enforce laws and rules that are new to our arsenal. The Dodd-Frank mandate closed a significant gap in the agency's enforcement authorities by extending the enforcement reach to swaps and prohibiting the reckless use of manipulative or deceptive schemes. In addition, the CFTC will be overseeing a host of new market participants.

A full increase for enforcement means more investigations and cases that the agency can pursue to protect the public. A less than full increase means that the CFTC will be faced with difficult choices. We could maintain the current volume and types of cases, but we would have to shift resources from futures cases to swaps cases or not cover all of the swaps market. Flat funding means not only that the Commission's enforcement volume likely would shrink, but parts of the markets would be left with little enforcement oversight.

The Commission's engagement in targeted enforcement efforts in the public interest include its historic actions regarding the rigging of benchmark rates, such as the London Interbank Offered Rate (LIBOR), a reference rate for much of the U.S. futures and swaps markets. Barclays, UBS and RBS were fined approximately $2.5 billion for manipulative conduct by the CFTC, the UK Financial Services Authority (FSA) and the Justice Department. At each bank, the misconduct spanned many years, took place in offices in several cities around the globe, included numerous people, and involved multiple benchmark rates and currencies. In each case, there was evidence of collusion. In the UBS and RBS cases, one or more inter-dealer brokers painted false pictures to influence submissions of other banks, i.e., to spread the falsehoods more widely. Barclays and UBS also were reporting falsely low borrowing rates in an effort to protect their reputation. While the cases led to $2 billion in fines flowing to the U.S. Treasury, this is about ensuring for financial market integrity.

ECONOMICS AND LEGAL ANALYSIS

For fiscal year 2014, the President's budget would support $24.6 million and 97 FTEs to invest in robust economic analysis teams and Commission-wide legal analysis, a decrease of $3.6 million and 20 FTEs from our estimate under the pre-sequester continuing resolution. The CFTC's economists support all of the Commission's divisions, including surveillance and complex enforcement cases. They have served on Dodd-Frank rule teams to carefully consider the costs and benefits of each rule.

The decision to make downward adjustments in the resources requested for this critical mission activity was not an easy one. However, given the increasing number of intermediaries the CFTC now oversees, examination teams need to be bolstered.

In 2014, the CFTC's economists will be integral in developing tools to analyze automated surveillance data and continuing to evaluate new products for clearing.

Flat funding means a strained ability to analyze the market and detect problems that could be negative for the economy. Flat funding also means the Commission's legal analysis team will be cut back even further to support front-line examinations, adding to the delays in responding to market participants and processing applications and straining the team's ability to support enforcement efforts.

CONCLUSION

The CFTC's hardworking team is just 9 percent more in numbers than at our peak in the 1990s. Yet since that time, the futures market has grown five-fold, driven by rapid advances in technology. The swaps market is eight times larger than the futures market. Effective market implementation of swaps reforms by the CFTC requires additional resources. We are not asking for eight times the funding or staff. Investments in both technology and people, however, are needed for effective oversight of these markets.

Though data has started to be reported to the public and to regulators, we need the staff and technology to access, review and analyze the data. With 80 entities having registered as new swap dealers and major swap participants, we need people to answer their questions and work with the NFA on the necessary oversight to ensure market integrity. Furthermore, as market participants expand their technological sophistication, CFTC technology upgrades are critical for market surveillance and to enhance customer fund protection programs.

This is an incredibly strained budget environment. But without sufficient funding for the CFTC, the Nation cannot be assured this agency can closely monitor for the protection of customer funds and utilize our enforcement arm to its fullest potential to go after bad actors in the futures and swaps markets. Without sufficient funding for the CFTC, the Nation cannot be assured that this agency can effectively enforce essential rules that promote transparency and lower risk to the economy.

Thank you again for inviting me today, and I look forward to your questions.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF HON. MARY JO WHITE, CHAIRMAN

Senator UDALL. Please proceed, Chair White.

Ms. WHITE. Thank you very much, Mr. Chairman, Ranking Member Johanns, and Senator Moran. I'm pleased to appear before you today with Chairman Gensler. Thank you for giving me the opportunity to testify in support of the President's fiscal year 2014 budget request for the SEC and to discuss how the agency would effectively use the funds requested to support the additional staff, technology, and training needed to fulfill our mission.

When I joined the SEC in April, the breadth and importance of the agency's responsibilities became immediately apparent. As Chairman Udall has summarized, in addition to vigorously enforcing the Nation's securities laws, the SEC oversees over 25,000 market participants, including over 10,000 investment advisers, 9,700 mutual funds and ETFs, 460 transfer agents, 4,600 broker/dealers, 17 national securities exchanges, and multiple clearing agencies and nationally recognized statistical rating organizations, as well as the Public Company Accounting Oversight Board (PCAOB), Financial Accounting Standards Board (FASB), Financial Industry Regulatory Authority (FINRA), the Municipal Security Rulemaking Board, and SIPC.

The agency is also, as the chairman said, responsible for reviewing disclosures of over 9,500 reporting companies. In addition, the Dodd-Frank Act gave the SEC significant new responsibilities for over-the-counter derivatives, hedge fund and other private fund advisers, municipal advisers, and security-based swap clearing agencies. The JOBS Act changed the way certain companies can go public and provided several new or revised securities offering exemptions, including a new regime for crowdfunding offerings, all of which the SEC oversees.

With the resources provided by Congress in recent years, the SEC has bolstered its examination and enforcement functions, enhanced its technology, and made important internal improvements. Much more, however, remains to be done. The SEC's current funding level presents significant challenges as we seek to keep pace with the increasing size and complexity of the securities markets.

If enacted, our request would permit us to add approximately 676 new positions to improve core operations and implement the agency's new responsibilities. While our funding is fully offset by securities transaction fees, and thus will not impact the deficit, we understand that we must always be good stewards of appropriated funds and use them in the most efficient way possible.

More specifically, our budget request would allow us to expand oversight of investment advisers. The number of registered advisers has increased by more than 40 percent in the last decade, while their assets under management have more than doubled to over

$50 trillion. Yet, during fiscal year 2012, the SEC was able to examine only about 8 percent of the registered advisers and over 40 percent have yet to be examined.

Although we've employed more risk-based analytics to target advisers for review and the advisers examined in fiscal 2012 represented 20 percent of the assets under management, significant additional coverage is essential.

This request would permit us to hire 250 additional examiners to increase the percentage of advisers examined each year. Our budget request would also permit us to bolster our enforcement program and continue to send a strong message to would-be wrongdoers that misconduct will be aggressively punished. We would focus enforcement hiring on increased market expertise, trial attorneys, forensic accountants, and the staff of the whistleblower and market intelligence offices.

Our request would also, importantly, support 45 additional positions in the Division of Economic and Risk Analysis, a roughly 45 percent increase in the size of this essential function. These positions would be primarily for additional economists to perform economic analyses in support of rulemaking and other activities, including economists with expertise in analyzing high-frequency trading data and market structure practices.

Our need to continue to invest in technology cannot be overstated. While the SEC is rapidly modernizing its systems, significant investments are needed to properly oversee the markets and entities we regulate. Technology initiatives that would be funded under this request include improvements to our system for receiving tips, our information technology (IT) security, and our IT infrastructure.

We also plan to use the statutorily created reserve fund to fund large mission-critical technology projects including our multiyear effort to overhaul EDGAR and to construct the Enterprise Data Warehouse, which will create a central repository for SEC data and effect significant efficiencies.

We are working to reduce costs wherever possible and, for example, achieved substantial technology-related cost savings in fiscal year 2012 of approximately $12 million. With respect to the very important Dodd-Frank and JOBS Act mandates, much has been accomplished, but much remains. A top priority is to promptly finalize the mandated rulemakings while recognizing the successful implementation will require additional staff and technology investments.

I appreciate your consideration of the President's budget request. Your continued support for the SEC and its increased responsibilities will allow us to better fulfill our mission and build upon the significant improvements the agency has achieved. I would be happy to answer any of your questions. Thank you.

[The statement follows:]

PREPARED STATEMENT OF HON. MARY JO WHITE

Chairman Udall, Ranking Member Johanns, and members of the subcommittee, thank you for the opportunity to testify today in support of the President's fiscal

year 2014 budget request for the U.S. Securities and Exchange Commission (SEC).[1] I welcome the chance to discuss how the SEC would make effective use of the $1.674 billion requested for the coming fiscal year and to explain why the agency needs the funding it is seeking to do the job it is required to do on behalf of investors and our capital markets.[2] As described in more detail below, the agency's funding request is critical to support the additional staff, technology, and training needed to fulfill our mission. Even though our funding mechanism is deficit-neutral, I recognize it is critical that we use appropriated funds in the most efficient and effective way possible as stewards of these resources.

As you know, the SEC has a broad, three-part mission: to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. When I arrived at the agency in April, two things were immediately apparent: first, the tremendous scope and importance of the SEC's mission, and second, the exceptional level of commitment, talent, and expertise the agency's staff demonstrates each and every day on behalf of America's investors and markets. One of the reasons the U.S. markets are the envy of the world is precisely because of the SEC's work effectively regulating the markets, requiring comprehensive disclosure, and vigorously enforcing the securities laws. I am honored to have the opportunity to lead the SEC in executing its mission.

Today, the SEC's jurisdiction and responsibilities have evolved to cover significant new aspects of the securities markets. As part of its core responsibilities, the SEC is charged with implementing and enforcing the Federal securities laws, overseeing thousands of key market participants (over 25,000 entities currently),[3] and reviewing disclosures and financial statements of approximately 9,100 reporting companies. With the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the Jumpstart Our Business Startups Act (JOBS Act), the agency's importance and scope of responsibilities increased. The Dodd-Frank Act gave the Commission significant new responsibilities for over-the-counter derivatives, hedge fund and other private fund advisers, municipal advisors, and security-based swap clearing agencies; and the JOBS Act changed the way certain companies can go public and provided several new or revised securities offering exemptions, including a new regime for crowdfunding offerings.

In recent years, the agency has made significant strides to strengthen its oversight over our markets, which are so critical to the savings of American families and to the growth potential of American businesses. With the help of the resources provided by Congress in recent years, the SEC has bolstered its examination, review, and enforcement functions, improved its capacity to assess risks, enhanced its technology, and made internal improvements designed to maximize efficiencies and reform its operations. Much more, however, remains to be accomplished.

The SEC's current level of resources still presents significant challenges as we seek to keep pace with the increasing size and complexity of the securities markets and fulfill our broad mandates and responsibilities. The fiscal year 2014 budget request—all of which would be fully offset by matching collections of fees on securities transactions and thus would not increase the Federal budget deficit—seeks to address these challenges directly, by better positioning the agency to provide the kind of market oversight that the public expects and deserves.

Before describing the details of our funding needs for 2014, I would like to briefly highlight a few key areas that I believe should be among four top priorities and that have been important drivers for our budget request.

KEY PRIORITIES

First, the SEC must complete, quickly and thoughtfully, the rulemaking mandates contained in the Dodd-Frank Act and JOBS Act. As discussed in greater detail below, although the SEC has proposed or adopted rules for about 80 percent of the more than 90 Dodd-Frank Act provisions that require SEC rulemaking, and also has

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[1] A copy of the SEC's fiscal year 2014 Budget Congressional Justification can be found on our website at http://www.sec.gov/about/reports/secfy14congbudgjust.pdf.

[2] The views expressed in this testimony are those of the Chair of the Securities and Exchange Commission and do not necessarily represent the views of the President or the full Commission. In accordance with past practice, the budget justification of the agency was submitted by the Chair and was not voted on by the full Commission.

[3] These participants include approximately 10,600 investment advisers, 9,700 mutual funds and exchange traded funds, 4,600 broker-dealers, and 460 transfer agents. The SEC also oversees 17 national securities exchanges, 7 active registered clearing agencies, and 10 nationally recognized statistical rating organizations (NRSROs), as well as the Public Company Accounting Oversight Board (PCAOB), Financial Industry Regulatory Authority (FINRA), Municipal Securities Rulemaking Board (MSRB), the Securities Investor Protection Corporation (SIPC), and the Financial Accounting Standards Board (FASB).

finalized 17 of the more than 20 studies and reports that it was directed to complete, much work remains. Similarly, the JOBS Act requires significant Commission rulemaking which has not yet been completed. Fulfilling these legislative mandates expeditiously must be an immediate imperative for the Commission. In connection with those rules, I will continue the Commission's efforts to ensure that the SEC performs rigorous economic analysis, which is critically important and will inform and help guide our rulemaking decisions.

While the Commission, with its existing staff, is already far along in many of its statutorily mandated rulemakings, we need additional staff and investments in technology to successfully implement these mandates. For example, the fiscal year 2014 budget request would enable the SEC to hire more economists to perform economic and risk analyses to assist in our rulemaking decisions, as well as support new technology for a municipal advisor registration system. We also need additional resources to improve our ability to help markets and market participants transition to new rules and requirements. Certainty is critical to the efficient functioning of our markets, particularly during periods of regulatory change. The fiscal year 2014 request also would allow us to hire additional staff with technical skills and experience to process and review on a timely basis requests for interpretations, registrations, and other required approvals. Additional resources will be needed to help conduct risk-based supervision of newly registered entities such as security-based swap dealers and major security-based swap participants, which will be subject to regulation by the agency.

Second, I am committed to further strengthening the core enforcement and examination functions of the SEC. Strong enforcement of the securities laws is necessary for investor confidence and is essential to the integrity of our financial markets. Successful enforcement actions result in sanctions that deter and punish wrongdoing and protect investors, both now and in the future. Similarly, our National Examination Program (NEP) is critical to improving compliance, preventing and detecting fraud, and monitoring market risks. As described in more detail below, the current level of resources is not sufficient to permit the SEC to adequately examine regulated entities and enforce compliance with the securities laws in a way that investors expect and deserve.

Third, the SEC needs to be in a position to provide adequate oversight of today's highly complex and dispersed marketplace so that it can be wisely and effectively regulated. Such oversight must come without undue cost and without undermining market vitality. We are working to understand more fully the impact on investors and the quality of our markets of high-frequency trading, complex trading algorithms, dark pools, and intricate new order types so that appropriate regulatory responses can be developed. I know that many in Congress are also interested in these important areas. The fiscal year 2014 budget request would assist the SEC in making investments in much-needed technology and expertise, not only helping us keep better pace with the markets we monitor and regulate, but also permitting us to see around corners and anticipate issues that may arise.

FISCAL YEAR 2014 REQUEST

The SEC is requesting $1.674 billion for fiscal year 2014. If enacted, this request would permit us to add approximately 676 new staff positions, which are needed both to improve core operations and implement the agency's new responsibilities. While we understand that this request comes during a time of serious fiscal challenges, we have tried to be targeted in making requests in the areas where the immediate deployment of resources is most critical.

The budget request would provide additional funding for the following key areas:

—expanding oversight of investment advisers and improving their regulation and compliance—a point at which investors are most at risk of being defrauded and harmed;

—bolstering enforcement—a primary function of the agency is to enforce the law and deter other would-be wrongdoers;

—economic and risk analysis to support rulemaking and oversight—critical to good rulemaking and effective oversight;

—building oversight of derivatives and clearing agencies—significant new agency responsibilities that help safeguard against a future financial crisis;

—enhancing reviews of corporate disclosures—including supporting implementation of the JOBS Act;

—leveraging technology—to improve our ability to detect wrongdoing, streamline our operations, and tighten the security of our data; and

—enhancing training and development of SEC staff—to increase our staff expertise.

I would now like to describe each of these in more detail.

EXPANDING OVERSIGHT OF INVESTMENT ADVISERS AND IMPROVING THEIR REGULATION AND COMPLIANCE

During fiscal year 2012, although the SEC continued to use and improve risk-based analysis to select examination candidates in its examination program and was able to examine advisers representing over 20 percent of the overall assets under management, it was able to examine only about 8 percent of the number of registered investment advisers. Over 40 percent of advisers have never been examined. The number of registered investment advisers has increased by more than 40 percent over the last decade, while the assets under management by these advisers have increased more than two-fold, to more than $50 trillion. At the same time as this exponential growth in size, the industry has grown increasingly more complex. This complexity includes: the use of new and sophisticated products, including derivatives and certain structured products; technologies that facilitate high-frequency and algorithmic trading; and complex "families" of financial services companies with integrated operations that include both broker-dealer and investment adviser affiliates. Although the agency has successfully focused its limited examination resources on those areas posing the greatest risk to investor assets, the SEC's examination coverage rate continues to be insufficient.

Therefore, under the fiscal year 2014 request, one of the SEC's top priorities is to hire 250 additional examiners to increase the proportion of advisers examined each year, the rate of first-time examinations, and the examination coverage of investment advisers and newly registered private fund advisers. This would be an important step in a multi-year effort to increase coverage by our examination program to meet our regulatory responsibilities to investors who increasingly turn to investment advisers for assistance navigating the securities markets and investing for retirement and family needs.

The NEP also would be able to add 60 positions to improve oversight and examination functions related to broker-dealers, clearing agencies, transfer agents, self-regulatory organizations (SROs), and municipal advisors. In addition, 15 positions would be used to support other critical program initiatives such as enhancing global risk assessment and surveillance efforts and improving technology capabilities. These positions are vital as the agency continues to strive to adapt to the rapid change and increasing complexity of the markets it regulates and its increased examination responsibilities with regard to clearing agencies, securities-based swap market participants, and municipal advisors.

BOLSTERING ENFORCEMENT

The ability to identify and bring timely, high-quality enforcement actions when violations of the Federal securities laws occur is integral to the SEC's core mission. The SEC must enhance its enforcement function not only to send strong messages to wrongdoers that misconduct will be swiftly and aggressively addressed, but also to adapt for the highly automated, high-speed markets of today and tomorrow. Under this budget request, we would be able to further refine our analysis of tips and leverage incoming data to identify trends of possible misconduct across product, sector, or geographic areas. We also would engage additional industry experts and proactive data analytics to better target industry practices that may harm investors. For example, we have developed algorithms to mine publicly-available hedge fund performance data to identify aberrational performance returns that could be indicative of conduct warranting further investigation. With additional front line investigative attorney, trial attorney, and forensic accountant resources, we would further bolster our core work of pursuing potential securities laws violations identified from these and other sources. The Division of Enforcement would focus its hiring of 131 staff on increased expertise in the securities industry and new product areas, trial attorneys, and forensic accountants, as well as staff for the Office of Market Intelligence, the Office of the Whistleblower, and the SEC's collections and distributions functions.

ECONOMIC AND RISK ANALYSIS TO SUPPORT RULEMAKING AND OVERSIGHT

For fiscal year 2014, the SEC requests funding to add 45 positions in the Division of Economic and Risk Analysis (DERA),[4] a roughly 45 percent increase in the size of this essential function. These positions would be used primarily for additional financial economists to perform economic analyses and research in support of the Commission's activities, including those undertaken in connection with the Dodd-Frank Act and JOBS Act. Specifically, DERA would seek economists with expertise in analyzing high-frequency trading data, market structure and practices, executive compensation and related areas of corporate governance, and credit-default swaps. DERA also plans to hire operations research analysts with backgrounds in mathematics, statistics, or econometrics to expand the development and delivery of risk metrics and analytics to inform risk assessment in examinations and investigations, rulemaking, and economic analysis.

BUILDING OVERSIGHT OF DERIVATIVES AND CLEARING AGENCIES

The Commission's regulatory responsibilities have been significantly expanded with the addition of new categories of registered entities (including security-based swap execution facilities, security-based swap data repositories, security-based swap dealers, and major security-based swap participants); the required regulatory reporting and public dissemination of security-based swap data; and the mandatory clearing of security-based swaps. To avoid bottlenecks and unintended market disruptions as the new requirements become operational over the next 2 years, the agency will need additional staff with technical skills and experience to process and review on a timely basis the requests for rule interpretations, registration, or required approvals. New staff also will be needed to supervise registered security-based swap dealers and participants, and to use newly-available data to identify excessive risks or other threats to security-based swap markets and investors.

In addition, the agency will need to focus further on enhancing its oversight of clearing agencies, including clearing agencies expected to register with the Commission in the near future. Currently, six clearing agencies have been designated systemically important by the Financial Stability Oversight Council (FSOC) and, of the six, the SEC is the supervisory agency for four. These designations have been accompanied by a materially higher level of oversight, including, for example, an annual exam requirement for those clearing agencies for which we are the supervisory agency, and also have required enhanced coordination with other agencies. We also anticipate additional work associated with Commission rules relating to clearing of security-based swaps, as the requirements are new and the relevant clearing agencies are new agency registrants.

Currently, the average transaction volume cleared and settled by the seven active registered clearing agencies is approximately $6.6 trillion a day. Notwithstanding this tremendous volume, the SEC currently has on staff 14 examiners devoted to examining registered clearing agencies, with only a limited on-site presence existing in four of the seven. Additionally, the SEC has about a dozen other staff focused on the monitoring and evaluation of risk management systems used by the existing clearing agencies, and will need to expand these efforts to address the expected increase in the number of clearing agencies and rule filings raising risk management issues. Without these additional resources, the mismatch between the amount of regulated clearing activity and staffing will be exacerbated both by the additional clearing agencies that are expected to register with the SEC as a result of security-based swap activities and the expanded oversight required due to clearing agencies' designations as systemically important by the FSOC. Accordingly, the fiscal year 2014 budget request seeks to add 25 positions in the Division of Trading and Markets and in the NEP to support these functions.

ENHANCING REVIEWS OF CORPORATE DISCLOSURES AND SUPPORTING IMPLEMENTATION OF THE JOBS ACT

For fiscal year 2014, the SEC requests 25 new positions for the Division of Corporation Finance. These positions would permit us to hire additional attorneys and accountants to continue to enhance the Division's reviews of large companies, and prepare, finalize, and implement the remaining rules and projects under the Dodd-Frank Act and the JOBS Act, including responding to requests for interpretive guidance with respect to new rules. Further, the additional positions would allow the

[4] The Division of Risk, Strategy and Financial Innovation was recently renamed the "Division of Economic and Risk Analysis" to better reflect its core responsibilities and focus. See www.sec.gov/news/press/2013/2013-104.htm.

Division to enhance its review of SEC rules and regulations impacting small business capital formation and better evaluate trends in increasingly complex offerings.

LEVERAGING TECHNOLOGY

Beyond the need to increase the number of experts dedicated to overseeing the securities industry, it also is critically important to continue leveraging technology to streamline operations and increase the effectiveness of the agency's programs. While the SEC has made significant progress over the past few years in modernizing our technology systems, the agency must continue to make significant investments if it is to properly oversee the markets and entities it regulates. The fiscal year 2014 budget request would add $56 million for technology to support a number of key information technology (IT) initiatives, including enhancements to the system for receiving tips, complaints, and referrals (TCR), improvements to IT security, and infrastructure upgrades to achieve efficiencies in business operations and reduce long-term costs.

The SEC plans to enhance its TCR system by building an interface to the agency's exam and case management systems, adding intake and routing functionality for referrals from SROs, and expanding internal reporting to SEC management on the tracking, investigation, and disposition of TCRs. Additionally, the agency plans to develop a component of the TCR system that will automatically triage incoming tips so they can quickly be flagged for additional follow-up.

The agency also seeks to make a significant investment in its information security program to deploy a new set of security tools and develop and train staff to monitor, respond to, and remediate threats. Additionally, the SEC is requesting resources to implement infrastructure upgrades that will achieve efficiencies in business operations and reduce long-term costs. For example, the agency plans a number of initiatives to automate business processes and share data across the agency, to improve collaboration and content management across the agency, and continue strategic replacement of existing hardware and software to hold down maintenance costs.

While the need for resources is significant, we also realize and appreciate the imperative to identify ways to reduce costs wherever possible. The SEC has made important strides forward in this regard, identifying and realizing substantial savings and operational efficiencies in recent years. For example, in the technology areas, agency initiatives have resulted in more robust IT infrastructure support contracts, savings in software maintenance and support contracts, upgrades to data storage systems, and reductions in remote connectivity and network costs. Together these steps yielded cost savings of approximately $12 million in fiscal year 2012, and continued savings are expected in fiscal year 2013 and beyond.

The SEC's savings initiatives are expected to continue into fiscal year 2014, as the agency is working to identify and implement new technologies and business process improvements that will offer increased performance with reduced operational costs.

SEC RESERVE FUND

In fiscal year 2014, the SEC plans to use $50 million from the SEC Reserve Fund, established by statute, to fund large, multi-year, mission-critical technology projects. As required by statute, we will continue to notify this subcommittee within 10 days of each obligation from the Reserve Fund. Among other projects, the agency would continue its multi-year effort to overhaul the Electronic Data Gathering, Analysis and Retrieval (EDGAR) system to create a new, modernized system that will meet Commission requirements for real-time system updates, reduce filer burden by providing simplified search and filing options based on filer experience (i.e., professional or novice), improve data capture by moving to structured formats for various SEC forms, and reduce the long term costs of operating and maintaining the system.

In addition, we plan to use the SEC Reserve Fund for the construction and enhancement of the Enterprise Data Warehouse (EDW). The EDW is a critical step in combining currently disparate sources of data from EDGAR filings, exam reports, investigations, external vendors, and many other sources. An organized central data repository will allow enhanced analytical capabilities, predictive modeling, and strengthened governance of data controls and quality standards.

We also plan to use the SEC Reserve Fund toward the development of the capability to intake, store, and analyze data from the upcoming Consolidated Audit Trail (CAT) that the Commission has mandated the SROs create to increase the data available to regulators. A CAT repository would enable the SEC to intake CAT data and store it in the EDW, as well as to develop analytical tools and a single software platform that will allow the SEC to identify patterns, trends, and anomalies in the

CAT data. The tools and platform will allow seamless searches of data sets to examine activity to reveal suspicious behavior in securities-related activities and quickly trace the origin.

ENHANCING TRAINING AND DEVELOPMENT OF SEC STAFF

The SEC's hardworking staff is the most important component of the agency's strength. The fiscal year 2014 request includes a significant increase in the SEC's total training budget to deepen staff expertise and skills, in order to keep pace with the rapidly evolving nature of the markets and areas of new responsibility. The planned investment principally supports training and development for employees directly involved in examinations, investigations, fraud detection, litigation, and other core mission responsibilities of the SEC. The training will consist of specialized in-depth training concerning new trends in the securities industry and changing market conditions, the impact of the current market structure on compliance and trading activities, and analytics and forensics using market data. The resources requested in the fiscal year 2014 budget would bring the SEC's level of training investment more on par with other Federal financial regulatory agencies.

DODD-FRANK AND JOBS ACTS PROGRESS

The subcommittee's invitation references the SEC's implementation of the Dodd-Frank and JOBS Acts. Below is a brief summary of our progress to date.

As discussed above, the SEC has proposed or adopted rules for about 80 percent of the Dodd-Frank Act provisions that require SEC rulemaking. We have also finalized 17 of the more than 20 studies and reports that the act directed the SEC to complete.

With respect to registration of private fund advisers, the SEC has implemented the Dodd-Frank Act's mandates, including rules to effectuate private fund adviser registration and reporting,[5] implementing new registration exemptions for certain advisers,[6] reallocating responsibility for smaller advisers to the State securities authorities,[7] and amending requirements for advisers that charge performance fees.[8] In addition, throughout the past year, SEC staff has been assisting private fund advisers as they file their initial Form PF data. Form PF is a confidential data reporting form providing data about private funds' risk characteristics, developed by the SEC and the CFTC, in consultation with FSOC, pursuant to a Dodd-Frank Act mandate.[9] We are beginning to use the data collected on Form PF to assist us in carrying out our regulatory mission, and going forward, we will seek to expand and improve our use of it, while also sharing the information with FSOC for their systemic risk analysis functions as contemplated by the Dodd-Frank Act.

The Commission also has proposed nearly all of the core rules required by title VII of the Dodd-Frank Act to establish a new oversight regime for the over-the-counter derivatives marketplace. Recent initiatives include:

—proposed rules regarding the application of title VII in the cross-border context; [10]

—proposed core financial responsibility rules for security-based swap dealers and major security-based swap participants; [11]

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[5] See Release No. IA–3221, "Rules Implementing Amendments to the Investment Advisers Act of 1940" (June 22, 2011), http://www.sec.gov/rules/final/2011/ia-3221.pdf.

[6] See Release No. IA–3222, "Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers with Less Than $150 Million in Assets under Management, and Foreign Private Advisers" (June 22, 2011), http://www.sec.gov/rules/final/2011/ia-3222.pdf.

[7] See Release No. IA–3221, "Rules Implementing Amendments to the Investment Advisers Act of 1940" (June 22, 2011), http://www.sec.gov/rules/final/2011/ia-3221.pdf.

[8] See Release No. IA–3372, "Investment Adviser Performance Compensation" (February 15, 2012), http://www.sec.gov/rules/final/2012/ia-3372.pdf.

[9] See Release No. IA–3308, "Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF" (October 31, 2011), http://www.sec.gov/rules/final/2011/ia-3308.pdf.

[10] See Release No. 34–69490, "Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants" (May 1, 2013), http://www.sec.gov/rules/proposed/2013/34-69490.pdf.

[11] See Release No. 34–68071, "Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers" (October 18, 2012), http://www.sec.gov/rules/proposed/2012/34-68071.pdf.

—final rules and interpretations adopted jointly with the CFTC regarding key product definitions; [12]
—final rules and interpretations adopted jointly with the CFTC regarding key entity definitions; [13]
—final rules adopted to establish operational and risk management standards for clearing agencies, including clearing agencies that clear security-based swaps; [14] and
—final rules adopted to establish procedures for the Commission's review of certain actions undertaken by clearing agencies.[15]

In addition, as part of its implementation of the Dodd-Frank Act, the Commission has established a whistleblower program which offers incentives for individuals with information regarding securities law violations to come forward. The Commission also has proposed permanent rules for municipal advisor registration,[16] as well as a series of rules designed to improve the practices of credit rating agencies, including rules to limit the conflicts that may arise when NRSROs rely on client payments to drive profits and rules to monitor rating agency employees who move to new positions with rated entities.[17] Beyond this, the Commission has adopted Dodd-Frank Act rules regarding accredited investors,[18] "say-on-pay",[19] asset-backed securities,[20] compensation committee listing standards and disclosure,[21] conflict minerals,[22] and payments by resource extraction issuers.[23]

SEC rulewriting teams also have been working on recommendations for the Commission's consideration with respect to JOBS Act rulemakings concerning general solicitation, crowdfunding, an exemption from registration for public offerings up to $50 million, and thresholds for registration and deregistration under section 12(g)

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[12] See Release No. 33–9338, "Further Definition of 'Swap,' 'Security-Based Swap,' and 'Security-Based Swap Agreement'; Mixed Swaps; Security-Based Swap Agreement Recordkeeping" (July 18, 2012), http://www.sec.gov/rules/final/2012/33-9338.pdf.

[13] See Release No. 34–66868, "Further Definition of 'Swap Dealer,' 'Security-Based Swap Dealer,' 'Major Swap Participant,' 'Major Security-Based Swap Participant' and 'Eligible Contract Participant'" (April 27, 2012), http://www.sec.gov/rules/final/2012/34-66868.pdf.

[14] See Release No. 34–68080, "Clearing Agency Standards" (October 22, 2012), http://www.sec.gov/rules/final/2012/34-68080.pdf.

[15] See Release No. 34–67286, "Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations" (June 28, 2012), http://www.sec.gov/rules/final/2012/34-67286.pdf.

[16] See Release No. 34–63576, "Registration of Municipal Advisors" (December 20, 2010), http://sec.gov/rules/proposed/2010/34-63576.pdf. The SEC received over 1,000 comment letters on this proposal. Many expressed concern that the proposed rules were overbroad, including well-publicized concerns about their potential impact on appointed board members of municipal entities, municipal investments unrelated to municipal securities, and traditional banking products and services. The staff is developing a recommendation for final rules that we anticipate will address these concerns.

[17] See Release No. 34–64514, "Proposed Rules for Nationally Recognized Statistical Rating Organizations" (May 18, 2011), http://www.sec.gov/rules/proposed/2011/34-64514.pdf.

[18] See section 413(a) of the Dodd-Frank Act and Release No. 33–9287, "Net Worth Standard for Accredited Investors" (December 21, 2011), http://www.sec.gov/rules/final/2011/33-9287.pdf.

[19] See section 951 of the Dodd-Frank Act and Release No. 33–9178, "Shareholder Approval of Executive Compensation and Golden Parachute Compensation" (January 25, 2011), http://www.sec.gov/rules/final/2011/33-9178.pdf.

[20] See section 942(a) of the Dodd-Frank Act and Release No. 34–65148, "Suspension of the Duty to File Reports for Classes of Asset-Backed Securities under Section 15(d) of the Securities Exchange Act of 1934" (August 17, 2011), http://www.sec.gov/rules/final/2011/34-65148.pdf; section 943 of the Dodd-Frank Act and Release No. 33–9175, "Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act" (January 20, 2011), http://www.sec.gov/rules/final/2011/33-9175.pdf; section 945 of the Dodd-Frank Act and Release No. 33–9176, "Issuer Review of Assets in Offerings of Asset-Backed Securities" (January 20, 2011), http://www.sec.gov/rules/final/2011/33-9176.pdf.

[21] See section 952 of the Dodd-Frank Act and Release No. 33–9330, "Listing Standards for Compensation Committees" (June 20, 2012), http://www.sec.gov/rules/final/2012/33-9330.pdf.

[22] See section 1502 of the Dodd-Frank Act and Release No. 34–67716, "Conflict Minerals" (August 22, 2012), http://www.sec.gov/rules/final/2012/34-67716.pdf. SEC staff has provided answers to Frequently Asked Questions about various aspects of Exchange Act section 13(p) and the rule, see http://www.sec.gov/divisions/corpfin/guidance/conflictminerals-faq.htm (May 30, 2013).

[23] See section 1504 of the Dodd-Frank Act and Release No. 34–67717, "Disclosure of Payments by Resource Extraction Issuers" (August 22, 2012), http://www.sec.gov/rules/final/2012/34-67717.pdf. SEC staff has provided answers to Frequently Asked Questions about various aspects of Exchange Act section 13(q) and the rule, see http://www.sec.gov/divisions/corpfin/guidance/resourceextraction-faq.htm (May 30, 2013).

of the Exchange Act.[24] Pursuant to title II of the JOBS Act, the Commission has proposed rules to allow general solicitation and general advertising for offers and sales made under Rule 506, provided that all securities purchasers are accredited investors and issuers take reasonable steps to verify that purchasers are accredited investors.[25] The Commission and staff continue to work diligently on completing this rule and on the recommendations for each of the other rulemaking mandates of the JOBS Act.

Title I of the JOBS Act also changed the initial public offering process for a new category of issuer, called an "emerging growth company," by, among other things, permitting certain of these companies to submit draft registration statements for review on a confidential basis, providing exemptions for such companies from various disclosure and other requirements for up to 5 years following their initial public offerings, and relaxing certain restrictions on communications by issuers and their underwriters. Although the provisions of title I were effective upon enactment of the JOBS Act, immediately following enactment, the staff published procedures for emerging growth companies to submit draft registration statements for confidential non-public review.[26] To date, the Commission has received more than 250 confidentially-submitted draft registration statements for non-public review as permitted under title I. Through the issuance of responses to frequently asked questions, the staff has provided guidance on the application of title I in light of the Commission's existing rules, regulations and procedures.[27] The staff is continuing to work with companies and practitioners when questions arise concerning the application of this title.

The JOBS Act also required the Commission to conduct several studies. The Commission was required, for example, to study the transition to trading and quoting securities in one penny increments—also known as decimalization—and the impact decimalization has had on the number of initial public offerings since its implementation.[28] The report on this study was submitted to Congress in July 2012,[29] and the Commission hosted a decimalization roundtable in February 2013. The Commission also was required to examine its authority to enforce the anti-evasion provisions of Exchange Act Rule 12g5–1 and submit recommendations to Congress.[30] A report on that study was submitted to Congress in October 2012.[31] The JOBS Act also mandated that the Commission conduct a review of Regulation S–K to determine how it may be modernized and simplified to reduce the costs and other burdens for emerging growth companies.[32] Commission staff is in the process of preparing its recommendations and working to complete the review in the near future.

While we have made significant progress on both the Dodd-Frank Act and the JOBS Act mandates, much work remains. As emphasized above, one of my top priorities is to promptly finalize the rulemakings required by each act, while at the same time recognizing that successful implementation will require additional staff and technology investments as set forth in the fiscal year 2014 budget request.

CONCLUSION

I very much appreciate your consideration of the President's fiscal year 2014 budget request. Your support for the SEC's expansive and vital mission will allow us to better protect investors and facilitate capital formation, more effectively over-

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[24] See titles II, III, IV, V and VI of the JOBS Act, respectively. SEC staff has provided answers to Frequently Asked Questions about some of these provisions, see http://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-12g.htm (April 11, 2012), http://www.sec.gov/divisions/marketreg/tmjobsact-crowdfundingintermediariesfaq.htm (May 7, 2012), and http://www.sec.gov/divisions/marketreg/exemption-broker-dealer-registration-jobs-act-faq.htm (February 5, 2013).

[25] See section 201(a) of the JOBS Act and Release No. 33–9354, "Eliminating the Prohibition against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings" (August 29, 2012), http://www.sec.gov/rules/proposed/2012/33-9354.pdf.

[26] See http://www.sec.gov/divisions/corpfin/cfannouncements/draftregstatements.htm.

[27] See http://www.sec.gov/divisions/corpfin/guidance/cfjjobsactfaq-title-i-general.htm, and http://www.sec.gov/divisions/marketreg/tmjobsact-researchanalystsfaq.htm.

[28] See section 106(b) of the JOBS Act.

[29] See "Report to Congress on Decimalization" (July 2012), http://www.sec.gov/news/studies/2012/decimalization-072012.pdf.

[30] See section 504 of the JOBS Act.

[31] See "Report on Authority to Enforce Exchange Act Rule 12g5–1 and Subsection (b)(3)" (October 15, 2012), http://www.sec.gov/news/studies/2012/authority-to-enforce-rule-12g5-1.pdf. The staff concluded that the current enforcement tools available to the Commission are adequate to enforce the anti-evasion provision of Rule 12g5–1 and determined not to make any legislative recommendations regarding enforcement tools relating to Rule 12g5–1(b)(3).

[32] See http://www.sec.gov/comments/jobs-title-i/reviewreg-sk/reviewreg-sk.shtml for comments on section 108 of title I.

see the markets and entities we regulate, and build upon the significant improvements we have made to date.

Thank you for inviting me to be here today. I would be happy to answer your questions.

Senator UDALL. Thank you very much. And thank you for those opening statements.

As you both know, I was a staunch supporter of Dodd-Frank, and as we approach its third anniversary I'm particularly concerned with its implementation and efforts to end the practices that spawned the crisis that hurt so many. However, I realize the budget constraints this year are very sobering.

Both the SEC and the CFTC are operating under a continuing resolution, with no increase in funds, compounded further by another reduction due to sequestration. Neither agency has the necessary funding that they requested for this current year. These shortfalls in resources make it difficult to meet a growing workload of significant, immediate requirements to address new swap entities coming under oversight.

For the millions of American investors saving for retirement, for entrepreneurs raising capital to start a business, and for those who rely on the futures markets as a means of price discovery and offsetting price risk, sequestration of agency resources of the CFTC and the SEC has a significant adverse impact on the protections the CFTC and the SEC strive to maintain.

Because of sequestration, neither the CFTC nor the SEC will be able to hire the necessary staff to fully implement programs that oversee areas such as over-the-counter derivatives, private fund advisors, or clearing agencies. Efforts to bolster the tools available to agency staff to uncover and prosecute violations of the law will be significantly curtailed. The ability to conduct examinations and oversight will be hindered.

So I want to get your answers to a couple of questions here, and this is directed to both of you. In balancing the risks and acknowledging that funds do not support meeting all that is expected, how are your agencies prioritizing the work and juggling competing demands this year? What will suffer as a result, and who will be harmed? Putting this in the context of your respective agencies' requirements for fiscal year 2014, describe the implications of the CFTC and the SEC if they are again faced with making these tough choices beyond the current year. And whoever wants to jump in first, that would be great.

Ms. WHITE. Let me start. Is this on? I think it is.

First, I just should observe that I essentially was, when I walked in the door, really struck by the massiveness of the responsibilities that the SEC oversees. We've talked about some of those in the opening statements. I cited the one example of investment advisors in terms of, you know, because of resource constraints what can be covered and what can't. There are, obviously, other examples.

Sequestration in particular, Mr. Chairman, has meant to us that we won't be able to hire staff to fully implement the new programs over the over-the-counter derivatives, the private fund advisors, the clearing agencies that you mentioned. We can't make investments in that new technology that we think is so important to the agency, particularly on the enforcement side and on the examination side,

which again, in turn, is so critical to finding wrongdoers and bringing them to justice and protecting investors. So it's a huge challenge for us every year.

What we've asked for in this year's request, and we realize the budget constraints that the Nation faces, frankly, is—tried to be surgical about it so that we can discharge our responsibilities as best we can. But there are choices to make. We have to make them every year. Should there be another continuing resolution, those will be and will have a substantial impact on our ability to discharge our responsibilities.

INCREASED RESPONSIBILITIES

Mr. GENSLER. I thank you for your question, and support. We balance these issues every day. This year, we actually shrank the agency, modestly, but on about a 710-person base, where we were 9 or 10 months ago we are about 25 or 30 people smaller. We did that in part with an eye toward sequestration. We didn't want the negative morale that would come out of furloughs. And we had a small bit of money, but important, about $6 million that, thank you, you gave us 2-year money. You wouldn't have known this, chairman, but 2 years ago, so we came into this year with a little bit of money to make that work.

What has suffered and what we haven't been able to do is, we frankly haven't been able to hire, and as you asked in an earlier point, when I have the right mix of people right now that truly know the swaps business and swaps markets as well as they know futures. We have great experts who are learning a lot about swaps. But it would be good to have additional people. We don't have enough money and technology, and state-of-the-art technology is critical to doing our jobs well.

In terms of 2014, if we are at flat funding again, we would not go into 2014 with any carryover money. And we've done some arithmetic. We'd have to skinny down the agency even further, about 50 more people, and shrink the agency further, which is about another 8 or 9 percent shrinkage, even though we have this large job to cover: both the swaps and futures markets.

Senator UDALL. Senator Johanns.

Senator JOHANNS. Thank you, Mr. Chairman.

Mr. Chairman, let me start with you, Chairman Gensler. As you know, the Budget Control Act was passed with significant bipartisan support. It was signed by the President of the United States; it is the law. That's just the reality of what we're dealing with. It established caps on the amount of money that can be spent over the next 10 years. So this is not a 1-year plan. This is something we need to pay attention to over the long term.

Decisions about how these caps will affect specific agencies or programs will be made by Congress and the President through the regular process. The caps established can't be weighed by a single chamber. Both chambers have to act in concert to do that.

Then, if the caps are exceeded, the BCA provides for the sequester process, which is largely across-the-board cancellation of budgetary resources. So, in the context of how that operates, our job up here, and therefore your job, is to figure out how to make appropriate decisions for all Federal agencies and departments.

Now, in your case, Mr. Chairman, the CFTC has requested a 50 percent increase over the last fiscal year, substantial by any measure. Do you continue to believe that such a significant percentage increase, which is the largest proposed in this Financial Services and General Government bill, is justified, number one? And number two, how do you justify it in comparison to the priorities of other agencies, one of which is sitting with you at the table today? Make your best case as to why you should win and she should lose.

Mr. GENSLER. Well, I'd hoped that the American public would win if we both got funding. So I want to support Chair White.

But I think it is a challenge. This is an unusual circumstance where a small Federal agency is just about the size we were 20 years ago. We've shrunk a little, because we did anticipate the sequestration would likely happen. We read the Budget Act, as you just laid out.

But we've been asked to take on this very large oversight role to a market that was at the center of the crisis. It wasn't the only problem. There were a lot of other problems that led to the crisis, but swaps were at the center of it. We've now completed in 3 years' time most of the rule-writing. We didn't do it was quickly as Congress wanted. They said 1 year. You all said 1 year. We took longer. And we're even phasing some of this all the way into 2014.

But we're now at this critical juncture where this vast complex swaps market is to be overseen. And the question for Congress is, Do we put the people and technology behind that? And I think that we should, because 8 million people did lose their jobs out of the crisis. Millions of Americans lost their homes. Hundreds of thousands of businesses had problems in that crisis.

This extra $100 million, and it is another $100 million, I believe is a good investment for the American public, even though, as you rightly pointed out, it's 50 percent on a base of $200 million.

Senator JOHANNS. Madam Chair, let me ask you that same question a little bit differently. The SEC has requested a 27 percent increase over 2012 and a 33 percent increase over the sequester amount for fiscal year 2013. Just because the SEC is funded by fees really doesn't excuse the Commission from managing the funding it has, and this subcommittee is required to give that serious oversight. That's why we're here.

Do you continue to believe that such a significant percentage increase is necessary? And explain to us why you believe we should make that sizeable increase for the SEC.

Ms. WHITE. Thank you for the question. I do maintain that as strongly as I possibly can. Obviously, as a relatively new chairperson at this agency, my focus is on understanding the context we're operating in in terms of the budget, you know, to get the job done, to discharge the responsibilities of this vital agency to our markets and to investors.

We are confronted with the responsibilities we've really outlined already, added to significantly by Dodd-Frank and the JOBS Act, and increasing complexity of our marketplace. I think it's also an agency that has in the last few years really tightened its internal controls over financial reporting, spending. I mentioned the cost savings, for example, that have been effected with the investment in new technology.

And so, I think, and I certainly agree that because we have matched funding and are deficit neutral does not excuse us from effectively using the funding that we're appropriated. And we certainly would do that.

But I think to minimally discharge our responsibilities, we very much do need this level of increase. And we have tried to be targeted and surgical about it.

Senator JOHANNS. When I came here 4 years ago, 4.5 years ago, the SEC was reeling from the Bernie Madoff scandal and the fallout from that; how could that possibly have been missed? Dodd-Frank came along. The JOBS Act came along. It was an opportunity, I think, for the SEC to show its talent and skill and get back on its game, if you will. In both areas, the SEC has been behind in getting the work done.

Tell me how that ship is going to get turned in a different direction and what you're doing or what your management team is doing to convince us that the investment being made here, whether it comes from fees or taxes or whatever, is being implemented in a wise way and is going to get things back on course.

Ms. WHITE. I think this is an agency that has gone through the times that you've mentioned. I think it's also an agency that certainly prior to my arrival has made significant strides in strengthening itself. It's had its best financial audits ever in fiscal year 2012. It's implemented a number of enhancements to its infrastructure.

In terms of handling tips, for example, one of our requested items for funding in technology is for that very system that should certainly, you know, help the agency considerably in not missing information or a tip, such as occurred in *Madoff* and *Stanford*.

In terms of the timing on the rulemakings, the SEC was given over 90 rulemakings under Dodd-Frank, additional ones under the JOBS Act. And I think that to date, under the Dodd-Frank, the SEC has proposed or adopted 80 percent of those. There's much left to be done.

I am clearly, as I said at my confirmation hearing, focused like a laser, I obviously am part of a commission, but in getting those mandated rulemakings done under both those statutes. I think we've made considerable progress already. I see more progress to come.

I just think at the end of the day, I mean, if you look even at the results the SEC has recently achieved in its enforcement division in terms of the financial crisis cases, in addition to the number of cases they've brought, the complexity of cases they've brought, the sophisticated institutional that they have charged, they've also gotten orders of penalties, returned monies of $2.7 billion. I mean, that's a ship that's working very well.

Much more to be done, and I'm committed to driving it to even greater heights. But I think they've accomplished a great deal, and I think the management team that we have in place now is firmly committed to seeing that that course is continued on an upward swing.

Senator JOHANNS. Thank you, Mr. Chair.

Senator UDALL. Thank you for that questioning.

And I will be recognizing Senators in the order of arrival. And we go to Senator Moran.

Senator MORAN. Mr. Chairman, thank you. First, let me welcome you to the chairmanship of our subcommittee and tell you that you have the better circumstance than your predecessor did. You have a finer ranking member than when I served in that capacity.

And let me welcome my friend Senator Coons to the Appropriations Committee and to this subcommittee.

I have about an equal number of questions for both of our witnesses. And I don't know what your plans are. Help me prioritize.

Senator UDALL. Sure.

Senator MORAN. Will we have more than one round?

Senator UDALL. If there's interest in more than one round, happy to do more than one round.

MF GLOBAL

Senator MORAN. Thank you, Mr. Chairman, very much.

Let me start, then, with Chairman Gensler. It was announced today that the CFTC is prepared to file civil charges as early as next week against Jon Corzine for the mismanagement that resulted in the largest bankruptcy since 2008's financial crisis. Civil charges can be an indication of no criminal charges to be filed.

I would appreciate knowing an update on the circumstances in which the continual public's request that heads roll when wrongdoing is found occurs, and I would like your analysis, your opinion as to whether or not those who committed either civil violations of the law or committed crimes will pay a price in that regard.

And then, again, a question that I've asked you previously, although not recently, about the likelihood that Kansas farmers and others are going to be made whole as a result of the efforts by CFTC in regard to MF Global.

Mr. GENSLER. As I think we've discussed in other subcommittees, maybe not in front of this subcommittee, as the MF Global matters move from regulatory to an enforcement matter, it's about 1½ years ago in November 2011, an enforcement matter that might actually include Jon Corzine, who, though it was 14 years earlier, I'd been a partner with, I stepped aside from any involvement in that enforcement matter. So I, too, read that which was in the newspaper this morning with interest, as you might have, being the first time that I knew what was in the newspaper. So I've been not participating in this matter over those 18 or 24 months.

But as a general matter, if I can speak to a general matter, I think that you're absolutely right that our laws, whether they are about customer protection that is so critical to the farmers and ranchers in Kansas, as you mentioned, or the broad rules that we have should be actively pursued not only in civil violations, but criminal.

We work very closely with the Department of Justice, for instance, with regard to the enforcement actions we brought around interest rate benchmarks, and we work with the Department of Justice actively on many of the matters we do.

Senator MORAN. Mr. Chairman, I guess I thank you for your answer. As you know, I've been critical of your recusal from these proceedings. Normally, one criticizes someone for not recusing them-

selves; I would have liked for you to have been involved in the efforts of something that is clearly important.

Let me ask you then in that regard if you would ask—I don't know who now is in charge of the efforts at the CFTC. I believe it used to be Commissioner Sommers.

Mr. GENSLER. Commissioner Sommers, and Commissioner is still there. And she's wonderful. But I will also—John Riley, who is the head of our legislative affairs here will ensure—is John here?

REAL TIME REPORTING

Senator MORAN. Would you ask Commissioner Sommers or the CFTC in general to respond to my question in writing? Thank you very much.

Let me ask another, more specific question. And this deals with the issue of real-time public reporting of swap transaction data. Dodd-Frank required that you write rules around public reporting of swap transactions. And part of that instruction from the law was that Congress specified that the rulemaking be done in a way that does not result in the identity of the market participants and does not reduce market liquidity.

I've met, over the course of the last several months, with a number of market participants in user companies who trade illiquid points on the curve in large sizes. And they clearly have evidence that their identities are being not disclosed, but are becoming evident. And as a result, there's a behavior that occurs in the markets knowing what end user is participating in that swap market.

So my point, or the point I would raise is that the rules that have been developed don't seem to comply with the instructions of the law to make certain that the identity of the end user is not known. And they also tell me that the cost of transacting in the marketplace has increased significantly since that rule was made effective, and they indicate 35 basis points is a common story to me.

So, I don't know how you solve this problem. I don't know what went through you, the thought process in your efforts to comply with the law in this rule. But perhaps it would be worth the CFTC considering a delay in the reporting when the contracts are illiquid, since price references are typically the front or nearby months on a curve. And I'm interested in knowing if the CFTC has or would consider that or another solution to this problem.

Mr. GENSLER. I think you'll find that you and I agree on almost all this. We did actually, when we finalized this rule, this was a rule we actually finalized unanimously in December 2011. It started, in fact, about 1 year later, December 31 of this past year.

There are time delays, depending upon the underlying market and whether they're end users. For instance, in the interest rate market that is large and liquid, there is a 30-minute time delay before the post-trade reporting. In some of the energy markets, agriculture markets, if they are what you and I would probably both call end users, there was up to a 48-hour time delay in the initial period and so forth.

So, what I'd like to suggest, if it's possible, anybody that you've met with, maybe we can jointly meet with them or I'd be glad to meet with them if you want us to follow up, because we did have

that sensitivity and kept Congress's intent in mind. But if for some reason we didn't get it right, we'd need to hear that and we need to see if there are other solutions.

Senator MORAN. At this point, you don't know the problem. But if we can bring it to you, you're interested in helping find a solution——

Mr. GENSLER. Absolutely, sir.

Senator MORAN [continuing]. Assuming that their stories, their facts are correct?

Mr. GENSLER. No, because the key thing is price transparency and volume transparency is what's critical to help markets, but not the identity of the actors. And I think Congress's intent is clear to us. That's what we tried to do in this triage, that some things would wait 48 hours, for instance.

Last, we also mask the size. If it's above a certain size, we don't actually say you have to say that it's a $300 million transaction in the energy markets, for instance. There's a smaller size.

But I would want to work with you and hear from your people.

Senator MORAN. I appreciate that offer, and I'll see if I can get two or three of us together.

Mr. GENSLER. All right. Thank you.

Senator MORAN. Thank you.

Senator UDALL. Thank you, Senator Moran.

And, Senator Coons, we want to welcome you to the Appropriations Committee and to this subcommittee. I understand from talking to you earlier today, this is your first activity in terms of appropriations. And so we're very happy to have you here today. And please proceed with your question.

Senator COONS. Thank you, Chairman Udall and Ranking Member Johanns, and my good friend Senator Moran. It's great to be joining on the subcommittee and on the full Appropriations Committee. I know I will have a steep learning curve, and I look forward to your help as I come up to speed on exactly how to best conduct myself on the Appropriations Committee.

And to Chair White and to Chairman Gensler, thank you for your hard work and your testimony today and for a chance to be with you here today. Your appearance in front of this subcommittee comes at, in many ways, a critical time. As we all know, the financial crisis destroyed an enormous amount of household wealth, created great wreckage in our economy, which, although we've had 39 months of consecutive job growth, we still don't have unemployment back to pre-crisis levels. And although there's been strong recovery in the market, there's still not full recovery from it.

And I think, more than anything, we have to ensure a collapse like this doesn't happen again. Dodd-Frank, although I was not a Member of the Senate at the time that it was passed, I think, took critical strong steps in the right direction. It creates new regulatory frameworks, in particular for derivatives. It enhances consumer protection, and it made significant steps toward ending too-big-to-fail institutions.

Yet having a fully functioning Dodd-Frank framework requires a tremendous effort from your organizations in particular.

There are encouraging signs. Chair White, in your testimony, I believe you mentioned that you have completed 80 percent of the

more than 90 Dodd-Frank provisions that require SEC rulemaking, and you've finalized 17 of 20 studies and reports that the SEC was directed to complete.

Chairman Gensler, if I read it right, your testimony suggested CFTC has completed about 90 percent of the swap market reform rules directed under Dodd-Frank.

But while you've accomplished all of this, there is, as the other members have commented, a great deal left to be done, given the remaining rules and studies for Dodd-Frank, the scope of the JOBS Act, and your oversight duties, which continue to grow and be challenging, given the complexity of the financial sector.

So, given all of that, I will strongly support sufficient funding for you to carry out your vital oversight duties.

Let me, if I might, ask a few questions about rules that are on the verge of coming online for Dodd-Frank and how we can work together to ensure that we achieve both well-regulated and vibrant financial markets, both protecting consumers and allowing financial institutions to have clear rules of the road.

There's been a great deal of debate about title VII of Dodd-Frank and your role with regard to derivatives. I believe the notional value of the derivatives market is something like $600 trillion. I thought that was a typo when I saw that in the briefing memo. So I think it is critical that we get the rulemaking in this area right, in the near term.

I'm concerned with the impression I've gotten that the SEC and CFTC are issuing a potentially conflicting or uncoordinated guidance in this area. Could you elaborate on efforts to harmonize between the CFTC and the SEC so-called cross-border derivative rules and what would facilitate harmonization going forward and what value there might be to harmonization going forward?

HARMONIZATION

Ms. WHITE. Thank you for your question. And just as a clarification, the SEC has either proposed or adopted 80 percent, not adopted 80 percent. I think it's over 40 percent that are adopted. And these rules, and particularly if we're talking about the over-the-counter derivatives space, you know, are quite complex. It is a uniquely global market with lots of regulators and lots of, you know, different markets and issues to try to get right.

And one of the commands of Dodd-Frank in doing that is to coordinate closely not only with the CFTC, but also with international regulators. And so we have been doing that. There are some differences, and they've been publicized, between what the SEC has proposed and some of its cross-border proposals when compared to the CFTC; we're in constant dialogue about those differences. We're not required to do a joint rule. There are some differences in the markets. But obviously, the objective should be to have certainty and as much consistency as possible.

And so we continue to work with all of our fellow regulators to do that. We had the benefit of the CFTC's initial proposals when we made our cross-border proposal on May 1. We're continuing to receive, you know, comments on that, and obviously one of the goals will be to harmonize those rules to the greatest extent pos-

sible, but still to carry out the statutory objective in a very robust way.

So I think that's what I would say as to that.

Senator COONS. Thank you.

Chairman Gensler.

Mr. GENSLER. We have been coordinating with the SEC since, well, Chair White's predecessor, Chair Shapiro, and I were announced together in Chicago in December 2008. And I do remember a discussion even that day in Chicago with the soon-to-be chief of staff about how important it was to harmonize. So we didn't wait for Congress to tell us how important it was. The now-mayor of Chicago told us in some colorful ways.

But we have since then, and even now share all of our draft documents. We share internal documents, deliberative documents, with the SEC. They go to our Commissioners, go to the SEC, pretty much within a day or two after we have them ready. And we get a lot of feedback, terrific, excellent feedback. We do similar things with the U.S. Treasury Department and the Federal Reserve and the Office of the Controller of the Currency, and so forth.

We do have a little bit different markets to oversee. And we are 90 percent now done. The SEC has more to do. We were handed about 60 rules to finish, and we've finalized 55 or so. We have the vast part of the market, the interest rate swap market, which is about eight-tenths of the whole market. And then, of course, the important energy, agricultural, and metals markets.

So we're probably ahead in timing from the SEC because they have so many other challenges that they're faced with. We're largely aligned, and even on the cross-border guidance, how we approach the definitions, for instance, of "U.S. person," how we're approaching the important issue of covering the guaranteed affiliates of U.S. financial institutions, meaning their offshore far-flung operations are quite similar to the SEC. But there are some differences, and we keep trying to see if we can narrow those differences.

Senator COONS. As Chair White mentioned, and as I think you implicitly just mentioned, these are uniquely global markets in some ways. There is some concern that we might place the American financial markets or institutions at a competitive disadvantage if these rules are finalized and implemented before competitive markets, non-U.S. markets achieve comparable regulatory progress.

Is there any value to that insight? Or in striking the balance, is it critical that we get to the finish line first?

Mr. GENSLER. I think the word you just used, Senator, is correct. It's a balance. So on the one hand, Japan, the United States, and Europe have passed laws. And they're strong, robust laws. And there's about 140 or 150 other nations around the globe that have not. You know, Japan, the United States, and Europe is a lot of the jurisdictional side of this. So we're looking most, and also two of the major provinces in Canada. So we're working closely with those areas that have completed rules.

In terms of competitive advantage or disadvantage, we also look, as Congress did, to protecting the American public, bringing transparency to these markets. And if international financial institutions want access to these markets, and I think this is correct at

the SEC, too, if they want access to the markets here to do transaction with U.S. persons, then they come under these reforms, the transparency and other reforms.

If U.S. financial institutions are operating overseas, and they still have a guarantee from the mother ship back here that's a concern. If we do not cover those risks, then we're back into that really awful place that we found ourselves in in 2008. AIG Financial Products was operating offshore, and yet the U.S. taxpayers put $180 billion in. It was guaranteed by the mother ship back here.

And so often, the large financial institutions generally have 2,000 to 3,000 legal entities. They set them up all around the globe. Usually, about one-half of them are somewhere else. But they might guarantee them back here. And that's what we, I think both agencies, are grappling with. Europe is grappling with the same issue. Their large financial institutions have guaranteed affiliates somewhere else, so that, if that risk is going to come back, particularly in complex financial institutions, we need to guard against that.

They were very committed if their rules in Europe, rules in Japan, Canada, elsewhere, that we look to, what's called substituted compliance. We want to look to those comparable rules for fulfilling the obligations.

Senator COONS. Thank you both very much.

Senator UDALL. Thank you, Senator Coons. Thank you very much.

I think there's an interest in a second round, so I'm going to start here.

Chair White, this question is really directed to you. The SEC has clear and longstanding authority to determine what information public companies must disclose to their shareholders. Using that authority, the SEC has amassed an extensive array of disclosure rules that provide shareholders with detailed information on the companies in which they invest.

In August 2011, a group of 10 corporate law professors petitioned the SEC to initiate a rulemaking project to address growing investor interest in receiving the information about corporate political spending. The petition emphasizes that interest among investors for this information has been percolating for nearly a decade, but was heightened significantly as a result of the U.S. Supreme Court's decision in *Citizens United*, which held that Federal restrictions on corporate independent spending in support of or opposition of political candidates are unconstitutional.

Since the petition on rulemaking was filed, more than a half-million comments on the petition have been filed with the SEC. According to media counts, the petition has attracted diverse input from both proponents and opponents of a possible disclosure policy. In December 2012, the SEC issued public notice as part of its unified agenda that it would add a possible rule proposal on political contributions to its regulatory agenda.

In the notice, entitled "Disclosure Regarding the Use of Corporate Resources for Political Activities," the SEC stated, "The Division of Corporation Finance is considering whether to recommend that the Commission issue a proposed rule to require that public companies provide disclosure to shareholders regarding the use of corporate resources for political activities."

The next step, according to the announcement, would be a notice of proposed rulemaking. The December notice listed April 13, 2013, as a projected date for that notice of proposed rulemaking. In May 2013, during questioning as part of the House hearing, you indicated that the SEC is not currently writing a rule to require public corporations to disclose their political contributions.

Couple of questions here: Is the petition seeking SEC issuance of a proposed rulemaking on this subject currently under review by the SEC? What component of the SEC is undertaking the review? And what is the current status of the review?

Ms. WHITE. The answer, the status of it is that the petitions are under review by the Division of Corporation Finance, the division that you referenced in your question. And the staff is considering whether or not to recommend the proposed rulemaking. There's no proposed rulemaking being worked on now. There is no determination by the staff or the Commission that there should be, in terms of the current status, whether there should be a proposed rule.

The focus of not only the Division of Corporation Finance, but the other divisions, as well as the Commissioners, is on the congressionally mandated rulemakings at this point. So the status is, it is still under review by the Division of Corporation Finance and no one is working on a proposed rule at this point. They haven't reached their determination. And I haven't gotten the benefit of that review. So, no judgment has been made on it.

Senator UDALL. And then, if they made no recommendation to you, how would it proceed from there? If you thought that there was a good reason to go forward with this, would you? Would the Commission act in order to inspire it? I mean, what process would be followed there?

Ms. WHITE. I mean, you know, again, I think if I ask them for a recommendation, they will probably give me a recommendation. But I certainly want to be made privy to their work and not prejudge the issue before reaching any assessment myself.

Senator UDALL. Sure. Sure. Do you have any sense on a timetable here? I mean, the reason I laid that out the way I did was trying to get a sense of where we were moving. And now there, how long are they going to continue to review it? Do you have any——

Ms. WHITE. I can't really be more specific, I think, than I have been on this.

Senator UDALL. Right.

Ms. WHITE. You know, as we sit here now, and for the foreseeable future, that division and the staff, much of the staff is focused very closely on the congressionally mandated rulemakings.

Senator UDALL. Sure. Sure.

Ms. WHITE. So I really can't, you know, give you any better sense of it than that at this point.

Senator UDALL. No. Thank you. Thank you very much. And part of the reason I asked this question is, when I go back to New Mexico and visit with my constituents, there's a lot of interest in this *Citizens United* and what's happened and the whole idea that, you know, for 100 years we had a law that said no corporate spending should take place except under these voluntary political action committees. And now that's changed. And so these corporate treasuries are in play.

And the corporate treasuries are huge, as you know. Just to pick one, Exxon-Mobil has an $81 billion corporate treasury that could be in play now. We only spent in Federal elections last cycle $6 billion. And so that's a huge amount of money that could impact the political process.

And I think investors and people looking at this say, "Well, if this is going to happen, if you're going to have companies way out there and start putting these big dollars into the political system, don't shareholders have a right to know about this? And what, do they have a right?"

And I think you and I talked about this yesterday. 60 percent of the companies are apparently doing something. They're putting something out there. And I think what helps is if the SEC lends some consistency to it and moves it forward so that we see something going on that's going to educate the public as to what's going on out there.

And I know that my Republican friends and colleagues, we all talk about transparency. And so if we're going to have a big push in terms of corporate dollars going into political activities, I would like to see it be transparent. I hope I can join them on this.

So with that, let me turn to Senator Johanns for his questioning.

CROSS BORDER

Senator JOHANNS. I do have some thoughts about that. But suffice it to say I think of the many things that you have to worry about. I mean, breathtaking responsibility. The SEC is coming off kind of a pretty tough time. Four and one-half or 5 years ago, things didn't look so good. The SEC had taken its eye off the ball.

There is a huge debate on the appropriate approach to campaign finance. It's been raging across this country for years and years and years, decades. Congress has grappled with this issue over and over again, passed laws. The Supreme Court has reviewed those laws because there's First Amendment rights at stake here.

I just caution you to tread very, very carefully into this area because there is nothing that is more controversial, more hotly debated. And why the SEC would want to place itself in the middle of that right now would be beyond me, but that's just a public observation on my part.

Let me, if I might, follow up on the swaps issue, the cross-border swaps guidance issue. And I'm going to preface my questions here with a little bit of history. Dodd-Frank, now about 2 years old, but we still don't have a resolution of exactly what we're doing here and what the direction should be. The CFTC has proposed cross-border guidance, but it includes a very broad definition of a "U.S. person." In addition, there's been interim and proposed definitions that many feel have created ambiguity for market participants.

Several foreign regulators have weighed in on this. They've expressed concern about the CFTC guidance. The European Commission warned the CFTC in a letter dated 2012 that "The proposed rules would lead to a duplication of laws and to potentially irreconcilable conflicts of law for market operators."

The Bank of Japan, in a letter to the CFTC, said, "It would not be acceptable for us that the Commission applies its regulations in addition to Japanese regulations in place to address the dif-

ferences." They've expressed concern about the CFTC's version of the concept "substituted compliance," which is also included in the CFTC guidance.

So, you now have foreign governments weighing in on this. On May 1, 2013, the SEC proposed rules governing cross-border activities in security-based swaps. The SEC's sequencing process seems to be less disruptive to me than the CFTC. During the meeting to approve the rules, Madam Chair, you noted that the provisions in the new rules will consider ultimate outcomes instead of going line by line by line, to use words that you used.

You also indicated that the approach taken by the new rules would allow the elimination of overlapping regulation when it truly is a duplication, while recognizing that regulatory regimes will necessarily differ in some respects.

You gained a new title, Mr. Chairman. It came from the Wall Street Journal. They referred to you as "the regulator for the world." And the finance ministers of foreign jurisdictions are confused, if not up in arms. The EU banking supervisor wrote a public piece in Bloomberg last week imploring the United States not to go it alone. And all of our major trading partners have urged a slowdown until the G–20 can convene. Now, having been a Cabinet member, when you're doing something that gets popped up to the attention of the G–20, you've really got people's attention.

Now, these regulations, as you know, were to go into effect in October, again in January, but swap participants have received no-action letters of exemptive relief twice since then. So, the current exemptive relief expires in just 2 weeks, with no one having a concrete idea of what the direction is going to be.

Just this morning, the Democratic CFTC Commissioner, Mark Wetjen, said in a speech, "The CFTC should take more time, solicit more feedback and input from market participants and foreign regulators before finalizing the rules." So my question to both of you, that's about a 5-minute introduction, but it's enormously complicated, number one; and number two, I think we've got everybody totally confused by what has transpired.

How do we sort that out between the CFTC and the SEC? You obviously are doing different things. You obviously have differences of opinion here. And is the marketplace truly ready for action to be finalized on the 12th, or should we follow the advice of one of your colleagues on the commission that says, "Let's take a deep breath here. Let's gather some more input before we drop the hammer on this"?

Mr. GENSLER. I think that the market can be ready. There are 78 registered swap dealers. The good news is, whether it's Société Générale from France, Deutsche Bank from Germany, Barclays Bank from the United Kingdom, Mitsubishi from Japan, some of the largest financially sophisticated firms around the globe, if they're dealing with U.S. persons, they're not only registered, a licensing procedure, but as of this past December, they have started reporting to their regulators and reporting their trades publicly, which Senator Moran was asking about earlier.

As of March, they had to clear those trades, and as of June, if they're doing it with a U.S. financial institution on the other side, clear those trades. They are clearing them. Good news there. They

have business conduct requirements, called "sales practice," as of May 1. I remember all these dates, but they're all on our website. They've all been out there for many, many months, sometimes for 1½ years.

So we have been bringing reform, as Congress directed us, to the American public. And again, the SEC has so many other bigger challenges. And we are a small agency that was asked to do this on 95 percent of the market.

I think it would be a mistake for the American public that an agency like ours would effectively repeal the reform Congress put in place by saying, "Nope. Three years after the law is passed, you know, guess what? If you're an affiliate of Morgan Stanley or Goldman Sachs or J.P. Morgan or Citibank or Bank of America"—I'll pick the five big ones—"and you're operating out of the Cayman Islands or something, this reform doesn't matter," because then they would just, you know, put their jurisdictions down there and all the risks would come back here.

Senator JOHANNS. But, Mr. Chairman, I don't think anybody is suggesting that. I mean, I voted against Dodd-Frank. I don't share the enthusiasm that the chair does. But having said that, the law passed. Now it's got to be interpreted, and it's got to be applied.

My concern is that the marketplace is just totally confused. And it's not accidental. It's been coming from you and your team, and probably the SEC to some extent, trying to figure a very complicated area out. And if we need more time to do that, we should take more time.

Even one of your colleagues on the Commission is saying, "I'm out."

Mr. GENSLER. It is not at all a surprise that this is going to be the most challenging area. And it's also not at all a surprise that Wall Street and, yes, the financial firms overseas, will say, "This is so confusing; we need more time." But what they're really saying behind that is, "Don't apply these commonsense reforms when we operate in our offshore jurisdictions."

You raised, and I just—if I could, Mr. Chair, you raised four issues.

Senator UDALL. Please.

Mr. GENSLER. "U.S. person," we did go broad last July. We have narrowed that, you mentioned an interpretation that we actually put out in December, to a more territorial approach, the definition of "U.S. person." While it's not identical to the SEC, it's far closer. And it will, I think, need at the end of the day to cover these hedge funds that have a principal place of business here in the United States. It might have a P.O. box in a tropical island.

You asked about European conflicts and Bank of Japan conflicts. We have narrowed them. Working very closely with the Japanese authorities, we did use a tool that we have in the toolbox called a no-action letter, so that where somebody has to clear a transaction, and the good news is Japan does have a clearing mandate. We said if it's clearing under that mandate and not our mandate, that was okay. But we had to use one of these tools in the toolkit.

With Europe, we have narrowed many of the issues there. And even last week when we were over in Montreal, we laid out with Chair White's help when she was there, too, an approach if a trans-

action were on a trading platform. We wouldn't want conflicts on those trading platforms and so forth.

But I think we've made tremendous progress. And last, on substituted compliance, we did get a letter from seven finance ministers and asked a question that we'd already answered privately, but I'll answer it publicly. We're absolutely committed that where there are comparable and comprehensive rules in a home country, that we find our way to look to that on the entity level requirements for these institutions on an outcomes-based approach.

Now, outcomes-based is a matter of judgment. And I believe that we should finish this guidance and can finish this guidance by July 12, and simultaneously give ourselves more time to come to those substituted compliance determinations, to give time to work with Europe, Japan, Canada, and so forth on those substituted compliance determinations.

Senator JOHANNS. Mr. Chairman, I know I'm way over time. But can we let Senator Moran go ahead and then come back?

Senator UDALL. Yes.

Senator MORAN. I'm happy to yield to the Senator.

Senator UDALL. Oh, well, if you'd go ahead.

Senator MORAN. As long as he doesn't take my time.

Senator UDALL. No, he's not taking—well, he's taking your time in a sense. But if you're willing to wait, that's fine.

Senator JOHANNS. I just, I don't want to—we can go back and forth forever. I just wanted to offer Chair White, you, the opportunity to offer your observations. Because there's obviously a difference of opinion here. Please go ahead.

Ms. WHITE. There are still some differences. I think there are some, in the SEC's proposal, there are places where we would apply, assuming it met the test in terms of the foreign regulators' rules, broader substituted compliance. Our rules are actually, the comments are due in in August on the cross-border release and on the substantive rules, I think at the end of July.

You know, certainly I don't think undue delay is good for anybody in this space. I think market certainty, however, is very important. I think robust rules are very important. It's about preventing risk, but at least certainly my staff has advised me that there still is considerable concern and uncertainty. It's an extraordinarily complex arena.

But our rules are actually, comments are still coming in. They're very useful to study in this very difficult area. And they will not be in until the end of August.

Senator UDALL. Thank you. Thank you. I think that was a very good discussion.

Senator Moran, go ahead.

Senator MORAN. Chairman, thank you again.

Let me just, I'm going to mostly visit with Chair White. But let me make sure that I have an understanding with you, Chairman Gensler, about MF Global and the status of the civil proceedings and/or criminal proceedings with Jon Corzine.

I asked that you would take my question to either Commissioner Sommers or to your staff and ask for a response to me or to the subcommittee. I want to make certain that you would ask them to respond to me in a matter of days, hours or days, not weeks or

months. This is a very timely topic, and I'd like to have a response as quickly as possible. And by that I mean a day or two.

Way too often, and I'm not directing this to you, Chairman Gensler, but so many times in a request for a written answer from a witness from our agencies, it's weeks, months, and sometimes forgotten. And I just want to make certain that our understanding is that you'll respond in the next day or two.

Mr. GENSLER. I guess the record will show that John Riley shook his head.

Senator MORAN. Since you can't answer the question, chairman, the record shows that John Riley nodded his head affirmatively. And I thank you for that.

[CLERK'S NOTE.—CFTC Commissioner Jill Sommers provided a verbal response to the office of Senator Moran.]

Senator MORAN. Chair White, let me ask about the JOBS Act. We had a conversation about this in your confirmation hearing, and I appreciated your answer then. I want to go into two areas in regard to that legislation.

First of all, title II of the JOBS Act removed the ban on general solicitation for issuers who sell securities only to accredited investors. The SEC has published proposed rules that eliminate this ban on advertising, provided issuers, quote, "take reasonable steps to verify that the purchasers of the securities are accredited investors."

I believe the SEC has said that they will make the determination whether or not that test has been met, on a case-by-case basis. There's a problem with that in people trying to conduct their business. And my question to you is, What does "reasonable steps" mean in practice? How can someone know that there is a safe harbor, that they'll not be criticized by the SEC if they're out pursuing investors in their company?

And this question comes to me from angel investors in our State. Something that we desperately in Kansas and across the country are people who are willing to invest in these start-up businesses. And there is just this significant level of uncertainty as to whether or not they are complying with your regulations, whether they would comply with your proposed regulation.

Ms. WHITE. Yes. And I think you're absolutely right, Senator. I think the proposal essentially envisioned the facts and circumstances test, or I call it principles-based approach. We've gotten a number of comments to the same effect as your constituencies have given to you that there is a need for more certainty, a non-exclusive list, at least a not-exclusive safe harbor that would actually specify some of the steps that would be taken as in satisfaction, absent some, obviously, contrary information that would undermine that. That is an area where the staff and the commissioners are quite focused as they work their way through this.

Senator MORAN. Thank you very much for that answer. And I just would suggest that in the failure to figure out a different answer than a case-by-case basis, my guess is that that provision, the encouragement of investment in start-up companies, will not occur. The legislation, the JOBS Act, its purpose will not be fulfilled if we simply leave this up to a case-by-case basis. So I thank you for the suggestion that it's being taken seriously.

And then on our usual conversation that I know that you get, and I always hate to be one who asks the same question that you are asked numerous times, and I asked you this back in, I believe it was February, at the confirmation hearing. Can you tell us about the crowdfunding rules and their finalization? And is it a problem of they're so complex that it's taking a long time? Or there's so much work at the SEC, other rules take priority?

And I know that you will not answer this question. I certainly know that you don't want to answer the question, and I doubt that you will. But can you give us the timeframe in which these rules will be finalized?

Ms. WHITE. The crowdfunding rules that you mention, and I know there has been a lot of excitement out there, hopefully not diminished by the passage of time. You know, that is a rulemaking. Just stepping back out, I can't give you a time or date; you're right. But my focus since the day I arrived there was essentially to look at all of the work streams that we had on rulemakings, make sure to the extent possible that they were parallel and you didn't have the same people working on, you know, different rules, because obviously that slows down progress.

And the crowdfunding is among the very top, you know, priorities that we are really working on quite actively. There are complexities in it. It's a heavy lift in some ways. As you know, funding portals, for example, you know, when rules with the registration with FINRA need to be worked out, we're coordinating very closely with them both on substance and timing. So we're in very active engagement on that rulemaking. That's about as much as I can say today, I think.

Senator MORAN. If I had more time, I would have asked about the two topics you just raised, FINRA and portals, which I think deserve specific questions and issues about them within this regulatory process as well.

Let me conclude with my final 58 seconds. Too often, I read in the press and see in the media that an agency has had an expensive, extravagant conference, seminar that brings a black eye to Congress, the people who oversee the funding, but certainly a black eye to the agencies and its leadership in a time in which you are here bemoaning the fact—and perhaps that's too strong. But I guess you would be decrying the fact that we need more resources. Sequestration is a problem. The continuing resolution is a problem.

There's no good time ever to waste taxpayer dollars. But I would like for each of you to assure me that there is no chance that I'm going to open the paper or turn on the news and see that either one of your agencies has conducted a seminar, workshop, conference in some extravagant location with some entertainment that's unbecoming of your profession and that is not within the tight constraints that a budget requires. Do I need to have any worries about what I might see or hear in regard to the CFTC or the SEC?

Ms. WHITE. I certainly hope not, Senator. I think we have very tight controls over our conferences. I mean, obviously, you need to train and meet to carry out your functions. In almost in toto, the conferences are held on SEC premises. The expenses are extraordinarily modest, limited to per diem, typically. And there are layers

of approval, depending on, you know, how much the conference cost, quite modest cost.

Mr. GENSLER. Now, we don't have the luxury even to come close to that. So I think you have that assurance. We do at times send people to conferences that are hosted by others, and we try to keep those numbers to a minimum number. But no, we don't.

Senator MORAN. And let me make clear that I don't find it objectionable for professional staff at the SEC or the CFTC or other Government agencies to attend appropriate, reasonable conferences that are designed to educate and to bring people within the industry—one of the things you will hear me consistently complain about is the uncertainty of what you're doing at the CFTC or the SEC among those people you regulate. In my view, you ought to be having the opportunity for you to convey to them what's happening at your agency, and they ought to have the opportunity to convey to you their concerns and complaints.

So mine is not raising the issue that you should not be out among the folks that you regulate providing input, getting input. But we all know there's a way to do that and there's a way not to do it. And I just wanted to make certain that when and if that occurs, you're doing it in the appropriate manner. And I would say that both of you answered my question in the affirmative, and I appreciate it.

Mr. Chairman, thank you.

Ms. WHITE. I think I answered that question.

Senator MORAN. Great.

Ms. WHITE. I hope to your satisfaction.

Senator MORAN. As I tried to indicate, both of you indicated that there is not a scandal in the works.

Ms. WHITE. Right. Definitely not.

Thank you.

PROTECTION OF CUSTOMER FUNDS

Senator UDALL. Thank you very much, Senator Moran.

Chairman Gensler, the startling failures of two futures commission merchants, FCMs, in the past 18 months, I'm talking there about MF Global and the Peregrine Financial Group. And the shortfalls in customer-segregated funds held by these firms captured the headlines and raised, I think, very serious questions about the regulatory oversight structure that failed to prevent these devastating losses.

In November 2012, CFTC's inspector general cited these two cases and identified the need to expand delivery of customer protection resources and consumer education as one of the two most serious management challenges facing the CFTC. In the aftermath of these collapses and resultant losses to customers, what steps have been taken to revamp the regulatory framework and oversight of FCMs in order to prevent similar fiduciary breaches and to better protect the funds' customers and trust to the FCMs?

Mr. GENSLER. I thank you, Mr. Chair. Protection of customer funds, as critical as it is to farmers and ranchers in the futures market, became even more critical as Dodd-Frank, as there's more customer funds in the swaps market coming to clearinghouses and futures commission merchants.

We worked with the self-regulatory organizations, the Chicago Mercantile Exchange, the National Futures Association. And they put in place rules last summer, about 1 year ago, with our collaboration. We had several public roundtables to do that. We've also proposed various rules at the Federal level, which are parallel with those of the self-regulatory organizations, and particularly addressed some of the issues we learned in Peregrine about accountants. And one area was the direct access to the bank accounts and knowing how much money is really in there when a firm like Peregrine, that had doctored their books.

So there was a lot to do. And the American public and the farmers and ranchers that rely on these markets need to know that we're doing that. We've worked with the self-regulatory organizations on their rules. We've also narrowed the use of investment of customer funds, which was an amendment we passed in last 2011. But we have yet to finalize some of these Federal-level customer protection rules, which I would hope to do in the latter half of this year.

Senator UDALL. Do you have the resources you need in order to do that?

Mr. GENSLER. We have the resources to finalize the rule. But we do not have the resources to appropriately examine futures commission merchants. We do rely on the self-regulatory organizations first and foremost. But I do think that it's appropriate to increase what's approximately a 40-person staff that's the examination function for intermediaries. This covers the clearing members, these futures commission merchants, and now the swap dealers. And we're a second line of examination, not the first line. But we do think that unit needs to be about twice that size. Our examination function is very stretched right now.

Senator UDALL. And you think that would protect consumers?

Mr. GENSLER. I think it will protect consumers, but also we are, by the nature of our agency, not somebody that has examiners on site. We're not like the bank regulators that often have examiners on site. And I don't think we're asking to change that. But as a second line of examination, coming second to the self-regulatory organizations, I do think that it would help protect the American public and to finalize our customer protection rules as well.

SPECULATIVE POSITION LIMITS

Senator UDALL. Let me shift over here to position 1-minute requirements. The enactment of Dodd-Frank Act included several provisions designed to insulate commodity prices from the impact of excessive speculation and manipulation. For example, under section 737, the CFTC was directed to establish position limits to cap on the size of bets for both swaps and futures.

In October 2011, the CFTC approved and published final rules establishing position limits for 28 different commodities. On September 28, 2012, a Federal court struck down the CFTC's efforts to impose speculative position limits because the CFTC did not explicitly demonstrate that its rules were necessary and appropriate. The court vacated and remanded the rule of the CFTC. The CFTC appealed the ruling, and there may be action, I think, underway to reissue the rule.

What is the status and forecast for republishing the position on that rule?

Mr. GENSLER. Mr. Chair, I do think it's important as we have, as we sought the appellate court's guidance on this. Because I would speak just as one Commissioner. I think Congress was quite clear that we were to do these rules. And I've had very lively discussions with Senator Moran, I see, on that.

And of course, one district court said, "Well, maybe not." So we simultaneously are looking, as you said, to following the guidance from that district court to move forward, and also reissue that rule. And if I can borrow from Chair White's answer to the crowdfunding question, it's a very high priority. It's a document that is coming together. And I hope would be in front of the Commissioners this summer. That will give a little bit of sense of timing.

Senator UDALL. Great. Thank you very much.

Senator Moran, do you want to go for another round, or shall we close up here?

Senator MORAN. Mr. Chairman, I'm satisfied for the moment.

Senator UDALL. Okay. Thank you very much.

And let me thank all who participated in preparing for this hearing. I appreciate the discussion with the top officials of these two pivotal agencies about their funding needs.

Today's discussion, I think, has been very helpful, with valuable insights into the agency's operations and challenges. This information will be instructive as we further consider the budget proposals and as we develop our fiscal year 2014 bill over the coming weeks.

ADDITIONAL COMMITTEE QUESTIONS

The hearing record will remain open until next Tuesday, July 2, at 12 noon, for subcommittee members to submit statements and/or questions to be submitted to witnesses for the record.

[The following questions were not asked at the hearing, but were submitted to the agencies for response subsequent to the hearing:]

QUESTIONS SUBMITTED TO GARY GENSLER

QUESTIONS SUBMITTED BY SENATOR TOM UDALL

POSITION LIMITS AND REDUCING EXCESSIVE SPECULATION

Question. The enactment of the Dodd-Frank Act included several provisions designed to insulate commodity prices from the impact of excessive speculation and manipulation. For example, under section 737, the Commodity Futures Trading Commission (CFTC) was directed to establish position limits—a cap on the size of the bets—for both swaps and futures.

In October 2011, the CFTC approved and published final rules establishing position limits for 28 different commodities. The position limit rule, which would have taken effect in October 2012—60 days following the August 13 issuance of a final rule defining "swaps"—was issued in response to Congress' concern that no single trader be permitted to obtain too large a share of the market, and that derivatives markets remain fair and competitive.

On September 28, 2012, a Federal court struck down the CFTC's efforts to impose speculative position limits because the CFTC did not explicitly demonstrate that its rules were "necessary and appropriate." The court vacated and remanded the rule to the CFTC. The CFTC appealed the ruling, and there may be action underway to reissue the rule.

What is the status and forecast for republishing the position limit rule?

Answer. Staff is preparing a revised notice of proposed rulemaking, taking into account matters addressed in the court decision. The staff recommendation is expected to be available for consideration by the Commission in the near future.

Question. When it comes to speculation, is it relatively easy to differentiate between normal speculation, excessive speculation, and manipulation?

Answer. Farmers, ranchers, producers, processors and packers all rely on futures and swaps markets to lock in the price of a commodity and manage risk. The futures and swaps markets help them to focus on what they do best—producing food and fiber and other products for the Nation. The Commodity Exchange Act includes the finding that excessive speculation causing sudden or unreasonable fluctuations or unwarranted changes in the price of a commodity is an undue and unnecessary burden on interstate commerce. In setting position limits generally, the agency sought to ensure that the markets were made up of a broad group of participants with a diversity of views. At the core of our obligations is promoting market integrity, which the agency has historically interpreted to include ensuring that markets do not become too concentrated. The act directs that the Commission set position limits at levels that would serve to the maximum extent possible to diminish, or prevent excessive speculation; deter and prevent market manipulation, squeezes, and corners; ensure sufficient market liquidity for bona fide hedgers; and ensure that the price discovery function of the underlying market is not disrupted.

The Commission's rule implementing the Dodd-Frank Act's anti-manipulation provision sets in place a broad new ability to effectively combat fraud and manipulation. The Commission can explicitly act against fraud-based manipulation. Congress also gave the Commission authority to prohibit trading practices that are disruptive of fair and equitable trading. With adequate resources, these and other authorities are available to be used by the Commission to promote and ensure fair and orderly trading, free from fraud, manipulation and other abuses.

Question. Has the CFTC conducted studies on the impact of position limits on excessive speculation? If so, what have those studies concluded?

Answer. As part of rulemaking regarding Position Limits for Futures and Swaps, the Commission reviewed over 50 studies by institutional, academic, and industry professionals that were cited by commenters. Some were supportive of positions limits, some were opposed, and many expressed no view on position limits. Thirty-eight of these studies were focused on the impact of speculative activity in futures markets and did not address position limits. The other 14 studies mentioned position limits, but did so only as part of a broader discussion of the role of speculation. None addressed the question of how the Commission should specifically implement the required limits to advance the objectives set forth in the Commodity Exchange Act.

Question. What are the key pieces of data that the CFTC currently analyzes to determine whether forces other than supply and demand are impacting the futures price of a particular commodity?

Answer. Commission personnel examine trading activity and positions.

Question. What are the "tests" for discerning the legitimate from the questionable?

Answer. The CFTC analyzes the data it gathers to detect trade practice violations, disruptive trading practices, and concentrations of positions indicative of market power. The CFTC depends on experienced surveillance staff using both regular tests and ad hoc reviews of the data.

ENFORCEMENT ACTIVITIES

Question. Detecting and deterring against illegitimate market forces requires the CFTC's steady vigilance and swift response. Market users and others must be protected from possible wrongdoing that may affect or tend to affect the integrity of the markets.

One of the CFTC's five strategic goals is to ensure that firms and individuals who come to the marketplace to fulfill their business and trading needs are in compliance with applicable laws and regulations. CFTC's most recent Performance Report describing the CFTC's accomplishments during fiscal year 2012 highlight some commendable results:

—102 enforcement actions, the highest in the agency's history.

—Opening of more than 350 new investigations—among the highest annual counts.

—Resolution of a landmark case against Barclays PLC and two affiliates for manipulations and false reporting concerning LIBOR and other global benchmark interest rates—resulting in a $200 million fine, the largest penalty ever imposed by the CFTC.

Let me preface by saying that these accomplishments are impressive.

Do the significant increases in the caseload suggest that there is more illicit activity occurring or is it because the CFTC is becoming more adept at rooting it out?

How rapidly is the CFTC able to collect restitution, disgorgement of ill-gotten gains, and civil monetary penalties imposed against violations of the Federal commodities laws? What is the recovery rate? Are there any statutory or administrative impediments that prevent the CFTC from doing more to combat fraud? What tools do you lack?

Answer. A combination of factors has contributed to increased enforcement activity by the Commission in recent years, but our ability to pursue actions is highly dependent on the availability of resources. When resources permitted, the Division of Enforcement hired additional staff attorneys and investigators to keep up with the demands of the docket. As a result, the number of investigations opened increased. Also contributing is the fact that the Commission has been granted new oversight authority. The Dodd-Frank mandate closed a significant gap in the agency's enforcement authorities by extending the enforcement reach to swaps and prohibiting the reckless use of manipulative or deceptive schemes. In addition, the CFTC will be overseeing a host of new market participants.

However, the Division currently has a staff of 156—about the same size as it was in 2002.

The following table demonstrates the Commission's results regarding penalties imposed and those collected through the first few months of fiscal year 2013.

CIVIL MONETARY PENALTIES

[Fiscal Year 1994–Fiscal Year 2013]

Fiscal Year	Penalties Imposed	Penalties Collected
1994	$4,112,407	$3,134,266
1995	11,201,100	9,430,239
1996	1,335,000	1,526,000
1997	4,532,000	1,752,636
1998	132,623,756	125,803,781
1999	85,863,311	22,165,368
2000	179,811,562	3,299,362
2001	16,876,335	3,170,252
2002	9,942,382	[1] 5,922,387
2003	110,264,932	87,699,077
2004	302,049,939	122,468,925
2005	76,672,758	[2] 34,163,077
2006	192,921,794	12,364,509
2007	345,614,139	12,137,848
2008	234,835,121	140,745,252
2009	99,489,609	17,362,486
2010	136,040,764	75,111,675
2011	316,682,679	11,343,236
2012	475,360,925	[3] 257,562,359
2013	1,326,645,157	1,031,806,815

[1] Includes $30,005 for civil monetary penalties imposed in prior years.

[2] Includes $617,409 for civil monetary penalties imposed in prior years.

[3] Collections as of fiscal year 2012.

The discrepancy between the amount of civil penalties imposed and the amount collected is accounted for by the following factors: (1) when courts order the defendants to both pay restitution to victims and a civil monetary penalty to the Commission, established Commission policy directs available funds to satisfy restitution obligations first; (2) in fraud actions, it is not uncommon that the proceeds of the fraud have been dissipated and/or that the penalty far exceeds the defendants represented financial ability to pay; (3) delinquencies assessed in default proceedings against respondents who are no longer in business and who cannot be located or are incarcerated; (4) penalties imposed on 1 year may not become due and payable until the next year; (5) a penalty may be stayed by appeal; (6) some penalties call for installment payments that may span more than 1 year; (7) penalties have been referred to the Attorney General for collection; and (8) collection still in process internally.

The President's budget for fiscal year 2014 includes an estimate of $57.7 million and 213 FTEs for enforcement.

A full increase for enforcement means more investigations and cases that the agency can pursue to protect the public. A less than full increase means that the CFTC will be faced with difficult choices. We could maintain the current volume and types of cases, but we would have to shift resources from futures cases to swaps cases or not cover all of the swaps market. Flat funding means not only that the Commission's enforcement volume likely would shrink, but parts of the markets would be left with little enforcement oversight.

ANNUAL EXAMS

Question. The CFTC regulates the activities of nearly 63,000 registrants who handle customer funds, solicit or accept orders, or give trained advice. Among these registrants are commodity pool operators, futures commission merchants, floor brokers, floor traders, and salespersons. CFTC delegates oversight authority to the National Futures Association, a self-regulatory organization (SRO).

The CFTC is constrained through limited resources from conducting reviews of CFTC registrants, more frequently than once every 3 years. Because of the triennial cycle, the ability to check compliance is diluted. The CFTC also would prefer to perform regular and direct reviews of all exchanges and intermediaries and to assess their compliance with the Commodity Exchange Act (CEA) rather than relying on Designated Self-Regulatory Organizations for these reviews.

What would be the advantages of performing more frequent reviews of registered entities (e.g., annual rather than triennial)? To what extent do you believe there is a risk that an ineffective self-regulatory program may go undetected or a systemic risk may not be identified if frequency of reviews remains triennial? Would more frequent reviews require adding staff with expertise in trading and build CFTC's knowledge base of how exchanges' various electronic trading platforms operate and how violations may occur on and across electronically traded markets?

Answer. Annual Exams: Examinations are the CFTC's tool to check for compliance with laws that protect the public and to ensure the protection of customer funds. The President's budget request for fiscal year 2014 would provide $44.3 million and 185 FTEs for examinations, an increase of $25.6 million and 104 FTEs over current levels. The CFTC would more than double our current allocation for this mission because the number of entities we examine is expected to more than double.

This is an area where the agency has fallen short of our goals in performance reviews. For intermediaries such as futures commission merchants (FCMs) and swap dealers, the CFTC relies on what are known as self-regulatory organizations (SROs) to be the primary examiners. Given our lack of resources, we're only able to double check the SROs' work on a limited number of FCMs each year, and the agency can spend little time onsite at the firms. Our budget also doesn't allow us to review commodity pool operators or commodity trading advisors.

On top of the current lack of staff for examinations, our responsibilities in 2014 will expand to include reviews of many new market participants. For instance, there are currently 106 FCMs, 82 swap dealers and two major swap participants have provisionally registered, and more are expected to do so. More frequent and in-depth examinations are necessary to assure the public that firms have adequate capital, as well as systems and procedures in place to protect customer money. Reviews are critical to ensuring the financial soundness of clearinghouses, and ensuring transparency and competition in the trading markets.

The President's budget for fiscal year 2014 would provide the funding estimated to be necessary for more thorough reviews. Fully funding the increase for examinations means the Commission can move toward annual reviews of all significant clearinghouses and trading platforms and adequate reviews of other market participants. A partial increase for examinations means cutting back our monitoring plans for new market participants and more in-depth risk reviews. Flat funding means we will continue lacking the ability to assure the public that the CFTC's registrants are financially sound and in compliance with regulatory protections.

QUESTIONS SUBMITTED TO MARY JO WHITE

QUESTIONS SUBMITTED BY SENATOR TOM UDALL

MARKET MUTUAL FUND REGULATIONS

Question. As you know, I have written to the Securities and Exchange Commission (SEC) with some concerns about the future of market mutual funds (MMFs). Given the role that market mutual funds play in short-term financing for State and local governments, I have been contacted by constituents who share my concerns that a floating Net Asset Value (NAV) will alter the nature of MMFs and tighten capital availability and raise costs.

Has the SEC reached out to local governments to learn more about their concerns?

Answer. In crafting the proposal, the Commission and its staff engaged in a deliberative process that included reaching out to many interested parties, including representatives of State and local governments. For example, I understand that in March of this year, Commission staff met with representatives from the National

Association of State Treasurers to discuss the concerns of government treasurers, learn more about how they use money market funds, and explore the anticipated effects of reform. We plan to continue to make further efforts to reach out to State and local government representatives regarding any concerns they might have with money market fund reform and look forward to reviewing any comments they might provide on the proposal.

Question. Are any efforts underway to address their concerns?

Answer. One of the primary goals of the reform process has been attempting to preserve the benefits of money market funds as much as possible. The floating NAV proposal, which was one of two alternative proposals, included exemptions for government and retail money market funds: under the proposal, those funds could continue to transact at a stable $1 price as they do today. The proposal also requested comment on whether the Commission should similarly exempt tax-exempt municipal money market funds, which serve as a significant source of capital for local governments. The proposal notes that many tax-exempt municipal money market funds are intended for retail investors and may choose to take advantage of the proposed retail exemption, which may further limit any potential disruption to State and local capital financing. As the Commission reviews the comments it receives and deliberates on how to proceed, any concerns raised by State and local government commenters regarding the effects of a floating NAV on money market funds will be carefully considered during the reform adoption process.

JUMPSTART OUR BUSINESS STARTUPS ACT UPDATE

Question. On April 5, 2012, the Jumpstart Our Business Startups (JOBS) Act was signed into law. The act requires the Commission to adopt rules to implement a new exemption that will allow crowdfunding.

Crowdfunding is essentially a means by which money is raised in relatively small amounts from a large number of people including through social media and other online platforms. The equity model of crowdfunding allows individual to invest in newly forming and established small businesses while realizing a return on their contribution and a way of financing an enterprise that bigger investors and lenders are often unwilling or unable to provide.

It has been estimated that potentially 60 crowdfunding portals will register with the SEC as a result of the JOBS Act. Without adequate staffing and technology infrastructure, the SEC may be unable to regulate these portals.

How do the responsibilities for the SEC under the JOBS Act impact your resource needs? What additional investments in staffing skills and supportive equipment are called for? How are those needs reflected in your fiscal year 2014 budget request?

Answer. Implementation of the JOBS Act impacts resource needs across various divisions and offices of the agency. While our fiscal year 2014 budget request does not break out in specific detail the staffing resources necessary to perform activities related to the JOBS Act, the request does discuss categories of JOBS Act-related functions where we believe we will need resources. Those include:

—*Capital Formation*.—The requests for the SEC's Divisions of Corporation Finance (CF), Trading and Markets (TM), and Economic and Risk Analysis (DERA) each include resources to finalize and implement new JOBS Act rules. The Divisions will need additional staff resources to answer interpretive questions related to the new rulemakings, monitor implementation of the new rules and the resulting market behavior, and collect, process, and analyze data related to the use of the new rules. TM also expects to allocate new staff to, among other things, exchange activities related to emerging growth companies, research, and offering matters.

—*Funding Portals*.—The SEC's Office of Compliance Inspections and Examinations (OCIE) will need additional resources for examining the funding portals under the new crowdfunding rule and for examining the oversight of funding portals by FINRA. Also, TM will allocate resources toward governing crowdfunding intermediaries, including processing FINRA rules.

—*Enforcement*.—The SEC's Division of Enforcement anticipates needing additional resources in connection with new rules permitting crowdfunding and general solicitation in certain Rule 506 offerings. Enforcement plans to employ technology-based risk assessments by analyzing data collected from broker-dealers, funding portals, issuers, and investors. They also expect an increase in tips, complaints, and referrals flowing through the Commission's central complaint system, requiring additional resources and infrastructure to process the information and to allocate staff to investigate and prosecute potential fraud and abuse in these two new sectors.

—*Outreach Initiatives*.—Title VII of the JOBS Act requires the SEC to provide online information and conduct outreach to inform small- and medium-sized businesses, and businesses owned by women, veterans and minorities, of the changes made by the JOBS Act. The SEC's Office of Minority and Women Inclusion is leading these outreach efforts, in consultation with other Divisions and Offices.

—*Investor Education*.—The SEC's fiscal year 2014 budget request includes staff for its Office of Investor Education and Advocacy (OIEA) to meet the resource needs it anticipates arising from the ability of issuers to use general solicitation and crowdfunding. OIEA seeks additional staff resources to: (1) prepare educational materials for retail investors; (2) address inquiries from investors who contact OIEA with questions related to investment opportunities learned through general solicitation and crowdfunding; and (3) conduct outreach to retail investors at investment seminars and conferences.

GAPS IN THE REVIEW FREQUENCY

Question. The SEC's Office of Compliance, Inspections and Examinations is responsible for conducting examinations of the Nation's registered entities, including broker-dealers, transfer agents, investment advisers, investment companies, the national securities exchanges, clearing agencies, SROs such as the Financial Industry Regulatory Authority (FINRA) and others.

During fiscal year 2012, the SEC was able to examine only about 8 percent of registered investment advisers. That means only 1 of every dozen of those investment advisers is inspected. Over 40 percent of advisers have never been examined.

Your prepared statement for a House hearing emphasized that while the SEC has focused its limited examination resources on those areas posing the greatest risk to investor assets, the SEC's examination coverage continues to be insufficient in comparison with the rates achieved by other financial regulators and in the opinion of many third-party observers.

What is the current frequency of reviews/exams? Is that sufficient or acceptable, in your judgment? What do you believe would be a more suitable frequency?

Answer. In fiscal year 2012, OCIE staff examined only 8 percent of all investment advisers. Although the SEC seeks to focus its limited examination resources on those areas posing the greatest risk to investor assets, the agency's examination coverage rate continues to be insufficient. That is why one of the SEC's top priorities under the fiscal year 2014 request is to hire 250 additional examiners to increase the proportion of advisers examined each year, the rate of first-time examinations, and the examination coverage of investment advisers and newly registered private fund advisers. This would be an important step in a multi-year effort to significantly increase coverage by our examination program.

While the number and frequency of examinations are important to an effective examination program, other non-quantitative factors, such as the effectiveness of examinations, selection of examination candidates and examination results, also are important. Additional resources are also needed to provide additional training for OCIE staff and to invest in technology to help OCIE better understand and evaluate increasingly sophisticated investment products and complex trading strategies pursued by investment advisers, including advisers to hedge funds.

In addition, our desire to increase the frequency of investment adviser examinations will need to be balanced with the increase of new Dodd-Frank mandated registrants, such as municipal advisors and security-based swap entities and participants.

Question. In the meantime before the SEC is able to establish annual review cycles, to what extent and with what success is the SEC using risk assessment procedures to identify the entities most suitable for review?

Answer. While the SEC's budget request details the need for the resources to examine a greater percentage of investment advisers in the coming years, OCIE already is using a risk-based examination approach with respect to the firms selected for examination, the areas of the firm examined, and the issues covered during the examinations. While the SEC was able to examine only about 8 percent of the number of registered investment advisers during fiscal year 2012, it was able to examine advisers representing over 20 percent of the overall assets under management. Staff draws on numerous sources for identifying high risk registrants and selected areas of focus. For example, staff works with colleagues throughout the Commission, including those in the Division of Economic and Risk Analysis, to identify high risk issues and to develop models and methodologies to identify registrants with anomalous characteristics. The staff also use algorithms to analyze available quantitative data to help better identify the firms that pose the greatest risk to investors. Those

advisers are then considered for examination. Once OCIE selects firms for examination using this risk-based methodology, examination staff rigorously reviews information about these individual firms before sending examiners out to the field.

In this regard, the program is focused on allocating our limited resources on registrants and issues that pose the highest risk.

SEC RESPONSIVENESS TO COMPLAINTS AND TIPS

Question. What has the SEC instituted to address concerns that the SEC was historically woefully unresponsive to complaints, tips, and referrals submitted to the agency citing potential violations of the rules and securities laws? To what extent does SEC management interface with your Inspector General to cross-match complaints and tips and referrals that may be routed to each of you to identify redundancy and duplication? If that is not occurring, would doing so pose any issues? Are all of the incoming complaints, tips, and referrals presently channeled to one centralized destination within the SEC for review regardless of the mode of transmission (e-mail, letter, hotline) or substantive nature of the issue? Does the SEC have an automated intake system in place at this time? If so, does it provide a means to link and search for multiple similar complaints against a single entity?

Answer. Over the last several years, the SEC has deployed an automated intake system for tips, complaints and referrals (the TCR System), which has significantly improved our ability to analyze and respond appropriately to information received regarding potential violations of Federal securities laws. The TCR System is the Commission's centralized system for receiving, analyzing and resolving tips, complaints and referrals from the public, other Government agencies, and self-regulatory organizations. It can be accessed from the Commission's website and incorporates information we receive by other means, including emails and letters. In addition, the Commission's Office of Investor Education and Advocacy enters inquiries and complaints it receives from the public into its Investor Response Information System and forwards allegations of potential securities law violations to the TCR System.

The agency also has instituted policies and procedures to ensure that the other SEC divisions and offices, including the Commission's Office of the Inspector General, enter tips, complaints and referrals into the TCR System as appropriate. Matters within the TCR System are then triaged, reviewed, and where appropriate, routed to the appropriate division, office or group for review and disposition. Searches can be conducted in the TCR System to, among other things, identify similarities or relationships between multiple tips, complaints and referrals.

QUESTIONS SUBMITTED BY SENATOR JERRY MORAN

MAKING CROWDFUNDING RULES ACCESSIBLE

Question. Background: Crowdfunding will introduce many entrepreneurs and small business owners to Securities and Exchange Commission (SEC) regulation for the first time. These entrepreneurs and business owners may not be familiar with "SEC speak" and may lack the resources to hire attorneys to explain it to them. Therefore, it is important that the rules be written in such a way that entrepreneurs and business owners seeking capital through crowdfunding are able to understand and comply with them.

What is the SEC going to do to make certain the rules and requirements of crowdfunding are clear and accessible to people unfamiliar with securities law?

Answer. We recognize the need for the crowdfunding rules to be clear and understandable, especially for individuals who are new to the capital markets and unfamiliar with SEC regulations. Staff from the Office of Small Business Policy in the SEC's Division of Corporation Finance, which acts as the SEC's ombudsman for small business, will be available to assist small businesses with their questions. In addition, under title VII of the Jumpstart Our Business Startups (JOBS) Act, SEC staff is conducting outreach efforts to these new market participants to inform them of the JOBS Act and the new ways to raise capital.

SEC COOPERATION WITH FINANCIAL INDUSTRY REGULATORY AUTHORITY ON CROWDFUNDING REGULATIONS

Question. Background: The JOBS Act requires entrepreneurs and small business owners to use the services of an intermediary to issue crowdfunded securities. Intermediaries are either SEC-registered brokers or "funding portals" registered with the SEC. A funding portal is an intermediary that does not offer investment advice;

does not solicit purchases, sales or offers to buy securities; does not compensate employees based on the sale of securities; and does not hold or manage investor funds.

While the SEC is writing the bulk of regulations for crowdfunding, Financial Industry Regulatory Authority (FINRA) is developing rules that would apply to member firms engaging in crowdfunding as a registered funding portal. Entrepreneurs have had to wait for more than a year for the SEC to issue rules and they are still waiting. If the SEC is not coordinating with FINRA, implementation could be further delayed.

How closely is the SEC working with FINRA on getting all the rules out related to crowdfunding and could FINRA be a roadblock to ultimate implementation?

Answer. We appreciate the need to work with FINRA to develop and implement crowdfunding rules expeditiously. From early in the process, SEC staff has been working collaboratively with FINRA staff as the staffs develop proposals for rules relating to crowdfunding. SEC staff has met on a number of occasions with FINRA staff to consult on the content and coverage of the rules, and the staff will continue to work with FINRA throughout the rulemaking process.

STREAMLINING REGULATION A OFFERINGS

Question. Background: Regulation A (Reg A) of the Securities Act of 1933 allows the SEC to exempt publicly offered securities from having to be registered if the value of the securities does not exceed $5 million during any 12-month period. Title IV of the JOBS Act (commonly called Reg A+) raised that ceiling to $50 million during any 12-month period. The JOBS Act also included a provision that if the securities are offered or sold on a national securities exchange, or are offered or sold to "qualified purchasers," they will be considered "covered securities"—exempting them from State securities law regulation. Otherwise, securities offered under Reg A+ are still subject to State securities regulatory review.

If a business wants to raise funds using Reg A and it does not offer securities on a national exchange or offer them to "qualified purchasers," the business must not only register with the SEC but with each State in which potential investors reside. This burdensome requirement may discourage businesses from using Reg A.

Changing this requirement would likely require new legislation.

Do you support Federal preemption of State registration requirements for issuers not meeting the provisions for Reg A+ offerings?

Answer. The issue of whether the Commission can and should preempt State "blue sky" laws in connection with Regulation A+ offerings that do not meet the preemption provisions in the JOBS Act is a significant one that the staff is considering as it prepares its recommendations for the Commission. While it is premature to reach a conclusion on this complex issue, I do believe it is important that the Commission create a workable exemption that facilitates the intent of title IV—to help small companies raise capital—while ensuring that the appropriate investor protections are in place.

SUBCOMMITTEE RECESS

Senator UDALL. And the subcommittee hearing is hereby recessed.

[Whereupon, at 4:46 p.m., Tuesday, June 25, the subcommittee was recessed, to reconvene subject to the call of the Chair.]