SPEECH 6

Protecting the Retail Investor

Chair Mary Jo White

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I. Introduction

Good morning. Thank you, Barbara, for that very kind introduction. It is my honor to speak before your Consumer Assembly.

For over 45 years, the Consumer Federation of America ("CFA") has played a critical role in advancing the interests of consumers through your research, advocacy and education efforts. At the Securities and Exchange Commission, we have a three-part mission -- to protect investors, to ensure fair and efficient markets and to facilitate capital formation. Each part of our mission circles back to the first – to protect investors – because if our markets are not fair and safe, they will not attract investors to provide the capital companies are seeking.

The SEC and the CFA thus have a common goal.

While we may not always agree on every issue, we are both focused on protecting the consumers in our securities markets – especially the individual investors, who we often refer to as "retail" investors – who invest their own money to save for retirement, or to buy a home or to send their children to college. The retail investor must be a constant focus of the SEC – if we fail to serve and safeguard the retail investor, we have not fulfilled our mission.

I would like to focus my remarks this morning on how the SEC strives each day to function as the investor's advocate – through investor education, by bringing bad actors to justice, by returning money to defrauded investors, and through new rules and regulations for the conduct of our markets.

Every member of the SEC's talented and dedicated staff has a responsibility to the retail investor, and they take this responsibility very seriously. And, just last month, we announced the appointment of the first head of the agency's new Office of the Investor Advocate. This office was created by the Dodd-Frank Act with a broad mandate to analyze the impact of the Commission's rules on retail investors and to identify areas where investors would benefit from rule changes.

We were very fortunate to name Rick Fleming to this important position. Rick has a long history of advocating for the interests of investors. He came to us from the North American Securities Administrators Association ("NASAA") where he served as Deputy General Counsel.

Our investor advocacy efforts also benefit greatly from our Investor Advisory Committee, which was also established by Dodd-Frank to advise and consult with the Commission on its

regulatory priorities and initiatives to protect investor interests and promote investor confidence. The Committee is made up of distinguished individuals from outside the SEC who have a broad range of experience in academia, non-profits and financial institutions. What they most have in common is that they are all focused on promoting the interests of investors. One of the Committee's most active members is the CFA's own Barbara Roper – and we are very grateful to Barbara and the other Committee members for their dedicated service.

II. A Retail Investor View of the Market

As we discuss the SEC's investor advocacy role, it may be useful to first step back and look at who retail investors are these days and what they do with their money. Then, I will talk about what the SEC has done and can do to better protect their interests.

Over half of Americans, either personally or jointly with a spouse, report that they own a stock directly or through investment vehicles, like a self-directed 401(k) or IRA. And over 44 percent of Americans – including most retail investors – invest in a mutual fund, which as you know, is a type of investment company that pools money from many investors and invests it in stocks, bonds, money-market instruments, other securities, or even cash.

That means that the majority of American households today are directly connected to the securities markets. In addition, there are millions of other households that are counting on a pension or another source of income that is itself dependent on the securities markets.

For heads of households owning mutual funds, 48 percent are college graduates and 75 percent are married or living with a partner. The median age for this head of household is 51, median household income is $80,000, and 72 percent work full or part-time. Of the individuals owning mutual funds, 44 percent are Baby Boomers, 25 percent are members of Generation X, and 17 percent are from Generation Y.

Retail investment in 2014 remains focused on retirement and education. Based on recent surveys, 93 percent of mutual fund investors are saving for retirement, and 27 percent are saving for education.

More generally, retail investors – like all investors – are fundamentally investing to increase their net worth. Some of you may have seen or read about the Fed's recent report about the increase in household net worth last year. In 2013, household net worth increased by almost $10 trillion – a 14% gain - to a record high of $80.7 trillion. Significantly, more than half of that gain ($5.6 trillion) came from last year's strong stock market.

Taken together, these figures suggest that the retail investor population represents a broad spectrum of Americans, many of whom have common investment goals and who, at least as a group last year, did well in the stock markets. But good statistical results for a year for some does not lessen the need for the SEC to work hard to serve the interests of all investors every year. Let me talk about a few of the ways we strive to do that.

III. Investor Protection Through Education

Investor education is one very important way that we protect investors and potential investors. Our Office of Investor Education and Advocacy, or OIEA, has been in existence for almost twenty years. OIEA advances the Commission's mission of investor protection by communicating daily with investors, responding to complaints and inquiries, and providing investor educational programs and materials.

OIEA also oversees our Investor.gov website, which is our online resource to help investors make smart investment decisions. It was just named by *Fortune* as one of the top five government websites based on the results of a customer satisfaction survey. We are very pleased about that and I urge each of you to visit the site.

Our policy divisions at the SEC work closely with OIEA to issue investor alerts and bulletins that provide educational tools to help investors understand risks associated with investing and avoid becoming victims of investment frauds and scams.

Just last month, we issued an investor bulletin on "How Fees and Expenses Affect your Investment Portfolio." Using clear charts and graphs, we illustrated how seemingly small fees can have a major impact on an investment portfolio over a long period. For example, did you know that over 20 years, a 1.00% annual fee reduces the value of a $100,000 portfolio by nearly $30,000 as compared to a 0.25% annual fee? We hope these bulletins and illustrations encourage investors to ask a lot of questions so that they know what they are being charged, and why. We also hope they encourage those charging the fees to be more transparent. We will also not hesitate to take enforcement action if the disclosures about fees are false or misleading.

Most recently, we issued an investor bulletin on "Variable Annuities" that explains what a variable annuity is, what the costs are, and how you can get your money out. As with our other bulletins, we encourage investors to ask the right questions and do basic due diligence before they invest, and to keep asking questions until they are satisfied with the answers. We frequently see investors purchasing products without really understanding what they are buying. With variable annuities, which are targeted for long-term investments for retirement savings, this is all too often the case.

In addition to educating investors about investment products, we also focus on helping investors to avoid becoming victims of fraudulent investment schemes. Our recent Fraud Alerts have warned investors to watch out for:

- Fraudulent pyramid schemes that are often pitched as legitimate business opportunities;
- Fraudulent investment schemes that claim a relationship to new and sometimes exciting products, like Bitcoin; and
- Email spam promoting "pump and dump" stock scams.

Our message to investors in all of our alerts and bulletins remains constant. Ask questions, do your research, and do not invest in something that you do not understand. And, like the old adage says: "If it sounds too good to be true, it probably is."

We have also directed our efforts to reach particular investor communities. Educational campaigns are used to send targeted messages and focus on emerging frauds, industry trends and particularly vulnerable segments of the population. We have, for example, conducted campaigns addressed to fraud on seniors, investment scams related to Hurricane Sandy, frauds involving solicitations by government impersonators, and various types of affinity frauds. We recently issued an Investor Bulletin with tips for seniors who use social media to help them steer clear of investment fraud.

IV. Investor Protection Through Enforcement

The SEC's role as an advocate for investors obviously does not stop at bulletins and educational efforts. One of the primary ways we protect the retail investor is through our

vigorous and comprehensive enforcement program. In order for retail investors to feel comfortable participating in the markets, they need to know that there is a strong and focused cop on the beat. That is why we aggressively pursue securities law violators in every area of the market and hold them accountable by imposing tough sanctions, including monetary penalties, disgorgement orders, industry bars and other relief. We also strive to return as much money as possible to harmed investors. In 2013, our Enforcement Division obtained orders to return $3.4 billion in disgorgement and penalties -- the highest level in the agency's history.

In vigorously pursuing wrongdoers in the securities markets, we, of course, want the punishment to fit the wrongdoing of the defendant. But our ultimate goal is to deter other wrongdoers. To do so, we are constantly looking for additional ways to strengthen our enforcement message.

Last year, for example, we modified the way we settle certain of the cases we bring against violators of the securities laws. Before I became Chair, the SEC had a long standing policy of permitting defendants to settle cases by paying civil penalties and agreeing to other remedies, but without admitting or denying what they did wrong or admitting to facts that showed that they broke the law. This has often been called the no admit/no deny settlement protocol.

This protocol has served the SEC, and many other civil law enforcement agencies, very well for many years, and it will continue to do so. When we settle enforcement cases with or without admissions of wrongdoing, we often are getting the very same – or even higher – penalties through the settlement process than we would if we brought the matter to court and won the case. Settlements speed up reclaiming ill-gotten gains, the collection of penalties and the return of funds to wronged investors. No admit/no deny settlements also avoid the delay and uncertainty inherent in trials and allow us to use our finite resources more efficiently.

Despite the advantages, some have questioned these types of settlements. And my years as the United States Attorney for the Southern District of New York, when I prosecuted terrorists, organized crime figures, insider traders and other securities fraudsters, taught me the importance of defendants admitting that they broke the law. The facts are clear and the message of deterrence is strong – if you break the law, you will be punished and publicly required to admit what you did. Admissions in certain of our cases are also important for investors to have confidence in our markets and in those enforcing the securities laws.

We now consider requiring admissions in cases where the violation of our securities laws includes particularly egregious conduct, where large numbers of investors were harmed, where the markets or investors were placed at significant risk, where the conduct obstructs our investigation, where an admission can send a particularly important message to the markets or where the wrongdoer poses a particular future threat to investors or the markets.

I felt this change was important to achieve greater public accountability and bolster the public's confidence in the safety of our markets.

We have already obtained admissions in a number of significant cases and I expect more such cases as the new settlement protocol evolves. The bottom line is that strong enforcement of the law is essential to protecting investors and ensuring the integrity of our markets.

V. Investor Protection Through Rulemaking

We also protect investors through our policy decisions. The interests of investors directly drive many of our rulemakings and are always considered in all of our rulemaking and policy initiatives. I would like to just mention a few recent examples.

A. Investment Adviser/Broker-Dealer Issues

A critical issue that has been very important to the CFA and to all investors for many years is the appropriate role and legal duty for investment advisers and broker-dealers, especially when they are both giving advice on securities to retail investors. Investment advisers are fiduciaries to their clients, and, as such, generally must put their clients' interests above their own and avoid, or disclose, any conflicts of interest when providing investment advice.

In contrast, a broker-dealer is not uniformly considered a fiduciary to its customers. Broker-dealers are, however, subject to comprehensive regulation under the Securities Exchange Act of 1934 and the rules of each self-regulatory organization to which the broker-dealer belongs, including the obligation, when recommending securities, that those recommendations be "suitable" for the customer. Whenever you have substantially similar services regulated differently, I believe it is necessary to consider carefully whether the regulatory distinctions make sense.

And Section 913 of the Dodd-Frank Act granted the Commission broad authority to impose a uniform fiduciary standard for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers. The question of whether and how to use this authority is very important to the Commission and to investors.

In order to more fully inform the Commission's decision on this matter, I have directed the staff to evaluate all of the potential options available to the Commission, including a uniform fiduciary standard for broker-dealers and investment advisers when dealing with retail customers, and other measures that may be more targeted and achievable in the shorter term.

I have asked the staff to make the evaluation of potential options an immediate and high priority so that the Commission has the information it needs to come to a decision as to whether and, if so, how best to exercise the authority provided in Section 913 of the Dodd Frank Act. I have made this a priority because it is very important and we need to move forward to a decision.

B. JOBS Act Initiatives

When Congress passed the JOBS Act in April 2012, it made significant changes to the capital formation process under our federal securities laws, and directed the SEC to write rules that will have a major impact on the private offerings markets and investors. While we have been working to implement those mandated changes, we have also been closely focused on how these rule changes will impact retail investors.

In July 2013, the Commission adopted rules implementing the JOBS Act mandate to lift the ban on general solicitation for certain exempt offerings of securities. The rules now allow companies to advertise and solicit the public for these offerings, subject to certain conditions. Many commented about the potential risks this new exemption could create for retail investors. Some are concerned that the general public could be exposed to more fraudulent activity and riskier investments. I share those concerns. And so, one thing we did at the same time we lifted the ban on general solicitation, was to adopt rules to prohibit the participation in these offerings of those that have committed securities law violations and other so-called bad actors.

In connection with the general solicitation rulemaking, I also directed the staff to form an intra-agency working group to closely monitor market developments, which will enable us to take appropriate steps, such as providing guidance, bringing enforcement actions or engaging in further rulemaking, to address problems or wrongdoing that may occur.

The Commission also simultaneously proposed additional rules to enhance our ability to monitor these developments and facilitate investor protection. Completion of this rulemaking is a top priority for me in 2014 and the staff is currently discussing with the Commission their recommendations for final rules. Our ultimate goal is to craft rules that provide effective, workable paths for companies to raise capital that also protect investors.

C. Other Rulemakings and Initiatives

We are engaged in many other rulemaking efforts and initiatives that are important to retail investors.

We are, for example, closely focused on the dramatic changes in the equity markets in recent years and whether the high-speed, technology-driven systems of today are serving retail investors well. And we have taken steps to improve the infrastructure that is critical to protecting the retail investor – just last year, we adopted significant enhancements to the rules governing brokers' custody of customer funds.

We are also moving forward on consideration of target date retirement fund advertising. Target date funds are, as you know, funds that invest in a mix of underlying assets or mutual funds that follow a pre-determined "glidepath" so that the investment mix becomes less risky as the fund approaches its target date. They are widely used for retirement investing.

In 2010, the Commission proposed rules to address concerns about investor understanding of the risks in target date funds. In April 2013, shortly after I became Chair of the SEC, the Commission's Investor Advisory Committee submitted a very useful set of findings and recommendations on target date funds. And I have directed the SEC staff to develop a request for additional comment for the Commission's consideration, so that we can benefit from additional feedback prior to proceeding with adopting final rules.

Another important issue for the Commission to decide is whether and how, if so, to exercise the authority provided under Section 921 of the Dodd Frank Act to limit or eliminate mandatory pre-dispute arbitration agreements, which I understand you had a panel on yesterday.

One final example is our initiative to improve our public disclosure regime. While this project is not yet at the rulemaking stage, our Division of Corporation Finance is developing specific recommendations for the path forward on updating the rules that dictate what a company must disclose in its filings. As part of this, we must be focused on not only the content of disclosures that investors need to make informed investment and voting decisions, but also how, where and when companies should make disclosures to make them more meaningful to all investors.

Making maximum and appropriate use of the internet in making disclosures to investors will be an important aspect of this initiative and I note that CFA published a very useful discussion of these issues in January.

Conclusion

Let me stop here. Hopefully, I have given you some sense of the many ways we are working to protect retail investors. Protecting all investors underlies everything we do. Their interests -- your interests -- must always be in the forefront of our minds at the SEC. There is no higher priority.

Thank you.

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