Securities Regulation Daily Wrap Up, TOP STORY—SEC Chairman Jay Clayton will step down at the end of the year, (Nov. 16, 2020)

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Clayton follows the customary path of the SEC chair stepping aside at the time of a transition to a new Administration.

SEC Chairman Jay Clayton officially confirmed what had been widely expected by announcing that he will conclude his tenure as Commission chairman at the end of 2020. Clayton began his chairmanship in May 2017 and guided the agency through, among other things, the early stages of the COVID-19 pandemic, the proliferation of initial coin offerings, the early fallout from Brexit, and the transition away from LIBOR.

Under law, the outgoing president will be permitted to designate an interim SEC chair upon Clayton's departure. That person would oversee the agency for the several weeks until the new administration, in recognition of what could be a slow Congressional confirmation process for a new appointee, puts in place its own interim chair.

Biden administration officials have given no indication of who is being considered to lead the SEC in the coming years. Speculation among financial industry observers has surfaced names such as former CFTC Chair Gary Gensler, who is a member of the Biden transition team, current SEC Commissioner Allison Herren Lee, former SEC Commissioner Robert Jackson Jr., former U.S. Attorney for the Southern District of New York Preet Bharara, Georgetown Law professor Chris Brummer, and former Delaware Chief Justice Leo Strine Jr.

Enforcement under Clayton. Regardless of who takes the reins at the SEC, many on Wall Street are bracing for a tougher enforcement approach in the next four years. In his three and a half years as Chair, Clayton oversaw the bringing of more than 2,750 enforcement actions and the imposition of over $14 billion in financial remedies. Under Clayton, the SEC returned roughly $3.5 billion to harmed investors and paid $565 million in awards to whistleblowers. The Commission conducted over 10,000 exams, including a record number of investment adviser exams in fiscal 2018.

In comparison, under Clayton's immediate predecessor Mary Jo White, the Commission brought more than 2,850 enforcement actions and obtained judgments and orders totaling more than $13.4 billion in monetary sanctions. Under White, who made it a priority to hold individuals accountable in enforcement actions, the SEC charged over 3,300 companies and more than 2,700 individuals, including CEOs, CFOs, and other senior corporate officers. White served as SEC chair from April 2013 through December 2016.

Accomplishments. In conjunction with Clayton's announcement, the SEC released a lengthy summary of the agency's accomplishments under his leadership. The Commission emphasized Clayton's focus on advancing the interests of Main Street investors and his work to improve the ability of businesses of all sizes to raise capital in public and private markets.

Under Clayton, the SEC adopted 65 final rules, many of which modernized rules that had not been updated in decades. Among them was the controversial Regulation Best Interest, which sets forth the standard of conduct required for broker-dealers when dealing with retail customers. While Reg. BI stopped short of requiring broker-dealers to act as fiduciaries, it did clarify the fiduciary duties owed by investment advisers to their clients.

In another move that split industry stakeholders into opposing camps, the Commission under Clayton approved a modernization of the shareholder engagement process, including the shareholder proposal system and the use of proxy voting advice businesses by investment advisers. Among other things, the rule, whose adoption was opposed by both Democratic commissioners, increased the ownership thresholds needed for a shareholder to be eligible to submit a proposal for inclusion in a company's proxy statement.

Under Clayton's leadership, the SEC took a number of steps to make it easier for companies to transition from private to public status. These included simplifying corporate disclosures, expanding the scope of smaller public companies that qualify for scaled application of disclosure and other requirements, and expanding JOBS Act benefits to additional public companies.

Other accomplishments listed in the SEC's review of Clayton's tenure include: the adoption of Form CRS to provide retail investors with easy-to-understand information about the nature of their relationship with their financial professional; harmonization of the exempt securities offering framework used by smaller and medium-sized businesses and startups; enhancements to the whistleblower program to add clarity, transparency and efficiencies; and improving the National Market System and rules governing securities exchanges and alternative trading systems to benefit investors.

COVID-19. One set of challenges Clayton addressed that no previous SEC chair had to face was leading the agency's response to the COVID-19 pandemic. The agency worked to ensure that markets continued to function in times of heightened volatility and provided relief to allow market participants to adapt to evolving challenges, subject to appropriate conditions for the protection of investors. The Commission also promoted robust disclosures from issuers on how their operations and financial condition were impacted by the pandemic.

Another development unique to the Clayton chairmanship was the proliferation of initial coin offerings beginning in 2017. The products opened new possibilities in finance but also were ripe for fraudulent activity. The SEC brought actions against those violating the federal securities laws, while at the same time providing clarity to investors and market professionals through its actions and statements.

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