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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2736

Office of FOIA Services

October 18, 2012

RE: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. 12-09883-FOIA

This letter is in response to your request dated July 22, 2012, and received in this office on August 09, 2012, for a copy of the SEC's response to correspondence from Senator Tim Johnson to Chairman Mary Schapiro dated November 9, 2011.

After consulting with the staff, we are releasing the enclosed correspondence dated December 20, 2011, as it appears to be responsive to your request.

If you have any questions, please contact me at mandicf@sec.gov. You may also contact me at foiapa@sec.gov or (202) 551-7900.

Sincerely,

Frank Mandic

Frank Mandic
FOIA Research Specialist

Enclosure

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

December 20, 2011

The Honorable Tim Johnson
Chairman
Committee on Banking, Housing, and
Urban Affairs
United States Senate
534 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson:

Thank you for your November 9, 2011 letter regarding the rulemaking approach of the federal financial regulators. I share your view that the approach should promote public participation, consider a wide range of factors, result in regulations that work in concert with other regulations to provide clear direction to the entities we regulate, and provide robust safeguards for those whom the rules are designed to protect. You asked for a response to a number of questions to ensure that the Dodd-Frank Wall Street Reform and Consumer Protection Act continues to be implemented thoughtfully and responsibly with full consideration of relevant issues. Your questions and my responses appear below.

1. Provide a detailed description of your agency's rulemaking process, including the variety of economic impact factors considered in your rulemaking. Please note to what degree you consider the benefits from your rulemaking, including providing certainty to the marketplace and preventing catastrophic costs from a financial crisis. Also describe any difficulties you may have in quantifying benefits and costs, as well as any challenges you may face in collecting the data necessary to conduct economic analysis of your rulemaking.

The Commission's rulemaking process is governed by the Administrative Procedure Act ("APA") and other federal statutes that prescribe the manner in which the Commission may undertake to consider or adopt rules of general applicability. In general, the Commission engages in "informal" rulemaking,[1] in which it seeks comments in advance from the public before adopting substantive regulations or amendments to existing regulations.

The APA requires that agencies provide interested parties with adequate notice of proposed rulemaking and the opportunity to participate in the rulemaking "through submission of

[1] "Informal" rulemaking is distinct from "formal" rulemaking. Sections 556 and 557 of the APA provide procedures that apply to "rules [that] are required by statute to be made on the record after opportunity for an agency hearing." 5 U.S.C. § 553. Known generally as "formal" rulemakings, these rulemakings require oral evidentiary hearings that employ special procedures analogous to those used in judicial trials. See 5 U.S.C. §§ 556, 557.

written data, views, or arguments...."[2] The Commission's practice in this type of "notice and comment" rulemaking generally proceeds as follows. First, the Commission publishes a "proposing release" for the rulemaking in the *Federal Register*. This document sets forth the text of the proposed rule, describes and explains the proposed rule, and solicits comments, including relevant data, from members of the public. Typically, one or more of the Divisions of the Commission has been responsible for preparation of the proposing release, following extensive analysis of an issue, consideration of alternatives, and consultation with other Commission staff and the Commissioners. The staff's final recommendation is presented to Commission for its approval, and typically the Commission holds an open meeting under the Government in the Sunshine Act to consider the recommendation and vote on approving it for publication in the *Federal Register*.[3]

After the proposing release is published, there is a period of time in which the public may provide its comments. The proposing release invites comment from the public on all aspects of the proposed rule, including on specific questions about the operation of details of the proposed rule or alternatives to the proposal. The Commission places copies of comment letters submitted, as well as any other data or information important to the Commission's consideration of the rulemaking, into the public rulemaking file. The public also is invited to submit comments by e-mail. Submitted comments generally are available on the Commission's website. The Commission staff and Commissioners also may meet with interested parties concerning the rulemaking, and memoranda of such meetings are generally placed in the public comment file.

After the comment period closes, the staff and Commission complete their analysis of the comment letters. In making a recommendation to the Commission on how to proceed, the staff will consider the comments provided in determining whether to adopt the rule as proposed, modify the rule to respond to issues raised in the comments, or substantially reconsider or revise the approach contained in the proposed rule. If the Commission determines to proceed with an approach significantly different from the rules proposed, it may need to re-propose the rules in order to give the public adequate notice and the opportunity to comment on the re-proposed rules.

A Commission vote to adopt final rules generally occurs at an open meeting, although it may occur through seriatim vote. If the Commission approves adoption of the rules, the Commission publishes a release in the *Federal Register*, with an explanation of the reasons for adoption and responses to the more salient issues raised in the comment letters. The rules are generally effective no earlier than 30 days after publication in the *Federal Register*, although the APA permits more immediate effectiveness in certain circumstances.[4]

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[2] 5 U.S.C. § 553(c). An agency may adopt substantive rules without prior notice and comment in limited circumstances. See 5 U.S.C. § 553(b). The Commission does not frequently use this procedure.

[3] On occasion, the Commission may vote on a rulemaking proposal without a Commission meeting, through its seriatim voting process. See 17 CFR 200.42.

[4] See 5 U.S.C. § 553(d) (effectiveness in less than 30 days is permissible if (1) rule is a substantive rule that grants an exemption or relieves a restriction, (2) rule is an interpretative rule or statement of policy, or (3) agency finds good cause for more immediate effectiveness). If the rule is "major" under the Congressional Review Act, it may not be effective for 60 days after publication in the *Federal Register*.

Economic Factors Considered in Commission Rulemaking - The Commission considers many factors in its rulemakings. In some cases, the authorizing statutes direct the Commission to consider particular elements relevant to those particular rules. In others, the statute directs the Commission more generally to consider the "public interest" or the "protection of investors." In addition to these matters, however, the Commission also considers a variety of economic factors. In some cases, these are considerations specifically required by statute. For example, the securities laws require the Commission, when it engages in rulemaking and is required to consider or determine whether the rulemaking is in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[5] In addition, Section 23(a) of the Exchange Act requires the Commission, in making rules and regulations pursuant to the Exchange Act, to consider among other matters the impact any such rule or regulation would have on competition. The agency may not adopt a rule under the Exchange Act that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission also considers the costs and benefits of rules as a regular part of the rulemaking process. We are keenly aware that our rules have both costs and benefits, and that the steps we take to protect the investing public impact both financial markets and industry participants who must comply with our rules. This is especially relevant given the scope, significance, and complexity of the Dodd-Frank Act. The SEC's Division of Risk, Strategy, and Financial Innovation ("RSFI") directly assists in the rulemaking process by helping to develop the conceptual framing for, and assisting in the subsequent writing of, the economic analysis sections of the Commission's rulemaking releases.

It is important to recognize that cost-benefit analysis is a tool that informs the rule making process and is not designed to be the sole determinant of whether a rule should be adopted. Economic analysis of agency rules considers the direct and indirect costs and benefits of the Commission's proposed decisions in comparison with those of alternative approaches. Analysis of the likely economic effects of proposed rules, while critical to the rulemaking process, can be challenging.

Certain costs or benefits may be difficult to quantify or value with precision, particularly those that are indirect or intangible.[6] The primary difficulties can be traced to the absence of suitable data. This situation often arises in rulemaking because many rules are designed to modify the behavior of market participants in response to perceived problems. When there are no precedents that can be used as a basis for analysis, it is impossible to rigorously predict anticipated responses to proposed regulations. In addition, relevant data are often only available from certain market participants. During the comment process, the SEC may ask the public to

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[5] See Securities Act § 2(b); Exchange Act § 3(f); Investment Company Act § 2(c); and Advisers Act § 202(c).

[6] In its report discussing cost-benefit analyses of Dodd-Frank Act rulemaking by financial regulators, the GAO noted that "the difficulty of reliably estimating the costs of regulations to the financial services industry and the nation has long been recognized, and the benefits of regulation generally are regarded as even more difficult to measure." GAO-12-151, p. 19; see also GAO-08-32.

quantify their estimates of cost and benefits, especially when the dollar costs of proposed rulemaking are known only to or best determined by market participants. Although this can be an effective method for obtaining data, it may be burdensome to the individuals and firms to actually provide it and such data may to be biased in favor of the respondent's preferred outcome.

In light of recent court decisions, RSFI and the rule writing divisions are examining improvements in the economic analysis the SEC employs in rulemaking. Although the existing procedures and policies are designed to provide a rigorous and transparent economic analysis, we are taking steps to improve this process so that future rules are consistent with best practices in economic analysis.

When engaging in rulemaking, the Commission invites the public to comment on our analysis and provide any information and data that may better inform our decision making. In adopting releases, the Commission responds to the information provided and revises its analysis as appropriate. This approach promotes a regulatory framework that strikes an appropriate balance between the costs and the benefits of regulation.[7]

The Commission's ability to gather data for use in its cost-benefit analysis is constrained in some respects by administrative laws, such as the Paperwork Reduction Act, although the Dodd-Frank Act provides the Commission with some relief from the data gathering constraints of the Paperwork Reduction Act in the rulemaking context.[8]

Regulatory Flexibility Act Analysis - The Regulatory Flexibility Act ("Reg Flex Act")[9] requires agencies, when proposing or adopting rules, to consider the special needs of small businesses. When an agency publishes a notice of proposed rulemaking, the Reg Flex Act generally requires the agency to prepare and make available for public comment an initial regulatory flexibility

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[7] After reviewing cost-benefit analyses included in six of our Dodd-Frank Act rulemaking releases, the SEC's Inspector General issued a report in June 2011. While the IG is continuing to review the Commission's cost-benefit analyses, this report concluded that "a systematic cost-benefit analysis was conducted for each of the six rules reviewed. Overall, [the OIG] found that the SEC formed teams with sufficient expertise to conduct a comprehensive and thoughtful review of the economic analysis of the six proposed released that [the OIG] scrutinized in [its] review." See U.S. SEC Office of the Inspector General, Report of Review of Economic Analyses Performed by the Securities and Exchange Commission in Connection with Dodd-Frank Rulemakings (June 13, 2011) http://www.sec-oig.gov/Reports/AuditsInspections/2011/Report_6_13_11.pdf at 43. We look forward to continuing to work with the OIG as it conducts a further review.

[8] Securities Act Section 19(e), as added by Section 912 of the Dodd-Frank Act, provides that, for the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws and the purposes of considering proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may: (1) gather information from and communicate with investors or other members of the public; (2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and (3) consult with academics and consultants. Securities Act Section 19(f) provides that any action taken under Section 19(e) will not be construed to be a collection of information for purposes of the Paperwork Reduction Act.

[9] 5 U.S.C. §§ 601-612.

analysis ("IRFA") that describes the impact of the proposed rule on small entities.[10] Among other things, the IRFA must describe the significant alternatives to the rules that the agency has considered that would accomplish the stated objectives of the applicable statute while minimizing any significant economic impacts of the proposed rules on small entities. When an agency publishes a final rule, the agency must prepare and make available to the public a final regulatory flexibility analysis ("FRFA"). Among other things, the FRFA must include a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Paperwork Reduction Act Analysis - The Paperwork Reduction Act of 1980[11] was intended to reduce federal paperwork burdens on individuals and companies. A federal agency generally may not conduct or sponsor a "collection of information" without the approval of OMB. In general, each time the Commission requires or requests information from ten or more persons by asking identical questions, such as through a form or other disclosure requirement, it must first obtain OMB approval. For rules proposed for public comment, the Commission generally submits the rule and an estimate of the rule's paperwork burden to OMB at the time it publishes the proposed rule in the *Federal Register*.

The proposing release for a rule solicits specific comments concerning the proposed collection of information, including: whether the proposed collection of information is necessary for the proper performance of the functions of the agency; whether the agency's estimate of the burden of the proposed collection of information is accurate; whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and whether there are ways to minimize the burden of collection of information on those who are to respond.

The adopting release for a rule summarizes: any comments received and explains the agency's response to the comments; explains any modification made to the rule as it applies to the collection of information, and why the modification was made; and reports any changes to the burden estimate, purpose, use, or necessity of the collection of information.

"Major" Rule Analysis - Under the Small Business Regulatory Enforcement Fairness Act of 1996,[12] a rule generally cannot take effect until the Commission submits a report on the rulemaking (regardless of its impact on small entities) to each House of Congress and the Comptroller General of the Government Accountability Office. The report generally includes: a copy of the rule, general statement on major/non-major status, proposed effective date of the rule, cost-benefit analysis, Reg Flex Act compliance, and any other relevant information. If a

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[10] Under the Reg Flex Act, the Commission is required to consider impacts on the small entities to which a rule directly applies; the Commission also typically considers indirect economic impacts as part of its broader economic analysis. The Reg Flex Act provides that agencies do not need to prepare initial and final regulatory flexibility analyses if the head of the agency certifies that the rule will not, if promulgated, "have a significant economic impact on a substantial number of small entities." 5 U.S.C. § 605(b).

[11] 44 U.S.C. §§ 3501-3520.

[12] Pub. L. No. 104-121, Title II, 110 Stat. 847, 857 (1996).

rule is "major," its effectiveness generally will be delayed for a 60-day period pending Congressional review.[13] SEC staff provide an initial analysis to OMB, which makes the final determination as to whether a rule is "major." The Act provides Congress with a special procedural mechanism for overriding an agency rule during a defined period after receipt of an agency's rulemaking report.

2. Provide your agency's current and future plans to regularly review and, when appropriate, modify regulations to improve their effectiveness while reducing compliance burdens. Please include a description of actions your agency has taken, or plans to take, to streamline regulations; for example, the Consumer Financial Protection Bureau's "Know Before You Owe" effort drastically simplifies mortgage and student loan disclosure requirements. Also note statutory impediments, if any, that prevent your agency from streamlining any duplicative or inefficient rules under your purview.

The Commission and staff currently have formal and informal processes for identifying existing rules for review and for conducting those reviews to assess the rules' continued utility and effectiveness in light of the continuing evolution of the securities markets and changes in the securities laws and regulatory priorities. Which process or processes may apply in the case of a given rule may vary depending on multiple factors.

One of the ongoing processes for review of existing rules is the review process under Section 610(a) of the Reg Flex Act, which requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within 10 years of the publication of such rules as final rules. The purpose of the review is "to determine whether such rules should be continued without change, or should be amended or rescinded ... to minimize any significant economic impact of the rules upon a substantial number of small entities." The Reg Flex Act sets forth specific considerations that must be addressed in the review of each rule: (i) the continued need for the rule; (ii) the nature of complaints or comments received concerning the rule from the public; (iii) the complexity of the rule; (iv) the extent to which the rule overlaps, duplicates, or conflicts with other federal rules, and, to the extent feasible, with state and local governmental rules; and (v) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The Commission annually publishes a list of rules that are scheduled to be reviewed by the Commission staff during the next 12 months pursuant to Section 610(a) of the Reg Flex Act. The Commission's stated policy is to conduct such a 10-year review of all final rules to assess not only their continued compliance with the Reg Flex Act, but also to assess generally their

[13] A rule is major if OMB determines that it is likely to result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers or individual industries, or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic export markets. See 5 U.S.C. § 804.

continued utility.[14] The list published by the Commission, therefore, may be broader than that required by the Reg Flex Act, because it may include rules that do not have a significant economic impact on a substantial number of small entities. In publishing the list, the Commission solicits comments generally on the listed rules, and particularly on whether the rules affect small businesses in new or different ways than when they were first adopted. The Commission accepts comments electronically – through a comment form on the Commission's website, an e-mail comment box, or the Federal eRulemaking Portal – or in paper mailed to the Commission's Secretary.

In addition to the annual list of rules scheduled for a 10-year review, the Commission also publishes twice yearly an agenda of anticipated rulemaking actions pursuant to section 602(a) of the Reg Flex Act. While the Reg Flex Act requires these semi-annual agendas to include only rules that are likely to have a significant economic impact on a substantial number of small entities, the Commission's general practice has been to include in its agendas all anticipated rulemakings for which it has provided or will provide notice and comment, regardless of their impact on small entities. The complete agenda is available at www.reginfo.gov, and information on regulatory matters in the agenda is available at www.regulations.gov.[15] The agenda includes both potential changes to existing rules, including rescission, and new rulemaking actions. The Commission publishes a notice of each agenda on its website and invites questions and public comment, through the electronic or paper means described above, on the agenda and on the individual agenda entries.

The SEC currently plans to review a number of existing rules pursuant to these processes. For example, the Commission's semi-annual rulemaking agenda under the Reg Flex Act lists a number of existing rules that are under consideration for revision. In addition, as discussed in more detail below, I recently instructed the staff to take a fresh look at the SEC's existing offering rules to develop ideas for the Commission to consider that would reduce the regulatory burdens on small business capital formation in a manner consistent with investor protection.

In addition, on September 6, 2011, the Commission published a Request for Information in the Federal Register, on the Commission's Web site, and on the Federal eRulemaking Portal (www.regulations.gov). The Request for Information invited interested members of the public to submit comments to assist the Commission in considering the development of a plan for the retrospective review of its regulations. The comment period closed on October 6, 2011. We received over 70 comments, which we are in the process of considering.

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[14] When the Commission implemented the Reg Flex Act in 1980, it stated that it "intend[ed] to conduct a broader review [than that required by the RFA], with a view to identifying those rules in need of modification or even rescission." Securities Act Release No. 6302 (Mar. 20, 1981), 46 Fed. Reg. 19251 (Mar. 30, 1981).

[15] The agenda also is published in the *Federal Register*, but the version of the agenda published in the *Federal Register* includes only those rules for which the agency has indicated that preparation of a Reg Flex Act analysis is required (i.e., rules that are likely to have a significant economic impact on a substantial number of small entities).

3. Provide details of how your agency encourages public participation in the rulemaking process, including through administrative procedures, public accessibility, and informal supervisory policies and procedures.

Public comment is vitally important to the Commission's rulemaking. As discussed earlier, the Commission generally engages in rulemaking in which it publishes notice of proposed rules and seeks public comment before adopting substantive regulations or amendments to existing regulations. The notice and comment period provides market participants, investors, regulated parties, and other interested persons the opportunity to offer views and suggestions on our proposals, as well as empirical data regarding their impact. It is important to note that the Commission generally considers comments received even after the expiration of the comment period. In addition, the Commission has reopened or extended comment periods in appropriate circumstances to provide additional opportunities for comment.

The views and data received from comments provide invaluable information that helps the Commission in crafting final rules that further our mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. We carefully review and analyze the comments received on our proposed rules, and address comments in our releases adopting final rules. In doing so, we coordinate the review across the agency so that appropriate staff expertise can be brought to bear on rulemaking.

Recognizing the importance of the rulemakings required under the Dodd-Frank Act, the Commission expanded its open and transparent rulemaking process shortly after the Act was signed into law by providing an opportunity for public input even before issuing formal rule proposals. To facilitate early public comment on Dodd-Frank implementation, the Commission made available a series of e-mail boxes, organized by topic, to receive preliminary views from the public. These e-mail boxes are on the SEC website. In addition, our staff has sought the views of affected stakeholders and the public. This approach has resulted in hundreds of meetings with a broad cross-section of interested parties. To further this public outreach effort, the SEC staff has held joint public roundtables with the Commodity Futures Trading Commission staff on select key topics. Through these processes, we have received a wide variety of views and information that is useful to us in proposing and, ultimately, adopting rules. The SEC also hosted a roundtable on the agency's required rulemaking under Section 1502 of the Dodd-Frank Act, which relates to reporting requirements regarding conflict minerals originating in the Democratic Republic of the Congo and adjoining countries.

4. Provide details of how your agency addresses the unique challenges facing smaller institutions when dealing with regulatory compliance, including any related advisory committees your agency may have or other opportunities for small institutions to be heard by your agency. Please also detail how your agency responds to concerns raised by small institutions.

In promulgating rules, the SEC takes into account the rules' impact on smaller institutions. As discussed above, the Reg Flex Act requires federal agencies, including the SEC, to consider the impact of regulations on small entities in developing proposed and final regulations and to consider alternatives that would lower the burden on small entities. Consistent

with that Act, whenever notice and comment on a rulemaking is required, the SEC analyzes the rulemaking's effects on small businesses and alternatives.

We anticipate that an analysis under the Reg Flex Act will be required for almost all of the rules that the SEC promulgates under the Dodd-Frank Act, and the SEC already has provided targeted relief to smaller institutions in a number of the rules that it has adopted under the Dodd-Frank Act. For example, in implementing Sections 404 and 406 of the Dodd-Frank Act, which require certain advisers to hedge funds and other private funds to report information for use by the Financial Stability Oversight Council, the SEC divided advisers by size into two broad groups – large advisers and smaller advisers. For smaller advisers, the amount of information reported and the frequency of reporting is much less than for larger advisers. In addition, in connection with the Commission's rules under Section 951 of the Dodd-Frank Act, which require issuers to provide for periodic votes on executive compensation and the frequency of those votes, we provided additional time for smaller reporting companies to comply with those requirements.

The SEC also is committed to reviewing the impact of existing rules on smaller institutions. As discussed earlier, Section 610 of the Reg Flex Act requires an agency to review its rules that have a significant economic impact upon a substantial number of small entities within 10 years of the publication of such rules as final rules.

Also, as noted above, I recently instructed the staff to take a fresh look at the SEC's offering rules to develop ideas for the Commission to consider that would reduce the regulatory burdens on small business capital formation in a manner consistent with investor protection. Areas of focus for the staff will include:

- the restrictions on communications in initial public offerings;

- whether the restrictions on general solicitation in private offerings should be revisited in light of current technologies, capital-raising trends, and our mandates to protect investors and facilitate capital formation;

- the number of shareholders that trigger public reporting, including questions surrounding the use of special purpose vehicles that hold securities of a private company for groups of investors; and

- regulatory questions posed by new capital raising strategies, such as crowdfunding.

In conducting this review, the staff will solicit input and data from multiple sources, including small businesses, investor groups, and the public-at-large. The review also will include the evaluation of recommendations from our SEC Government-Business Forum on Small Business Capital Formation (see the discussion below) and our recently-created Advisory Committee on Small and Emerging Companies, as well as suggestions we receive through the website solicitation of suggestions.

In addition to considering the regulatory compliance challenges of smaller institutions in promulgating and reviewing rules, the SEC provides these institutions with a number of avenues for airing their compliance concerns. The SEC holds an annual SEC Government-Business Forum on Small Business Capital Formation. This gathering has assembled annually since 1982, as mandated by the Small Business Investment Incentive Act of 1980. A major purpose of the Forum is to provide a platform for small businesses to highlight perceived unnecessary impediments to the capital-raising process. Previous Forums have developed numerous recommendations seeking legislative and regulatory changes in the areas of securities and financial services regulation, taxation and state and federal assistance. Participants in the Forum typically have included small business executives, venture capitalists, government officials, trade association representatives, lawyers, accountants, academics and small business advocates. In recent years, the format of the Forum typically has emphasized small interactive breakout groups developing recommendations for governmental action.

Our Compliance Outreach Program also provides a forum for regulated entities to learn about effective compliance practices, discuss compliance issues, and for senior officers to share experiences. The mission of the program is to improve compliance by opening the lines of communication between SEC staff and Chief Compliance Officers and other senior officers of registered broker dealers, investment advisers and investment companies. The program features a number of elements, including regional events at various locations across the country and national events sponsored in Washington, DC.

The Commission also recently established an Advisory Committee on Small and Emerging Companies. The Advisory Committee is intended to provide a formal mechanism through which the Commission can receive advice and recommendations specifically related to privately held small businesses and publicly traded companies with less than $250 million in public market capitalization. The members of the Advisory Committee include representatives from a range of small and emerging companies, and investors in those types of companies, with real world experience under our rules. The Advisory Committee held its first meeting on October 31, 2011, where it considered a number of issues related to capital formation for small and emerging companies, including the triggers for registration and public reporting and suspension of reporting obligations, possible scaling of regulations for newly public companies, crowdfunding, possible modifications to Regulation A, and the restrictions on general solicitation. We understand that the Advisory Committee intends to provide preliminary recommendations to the Commission on many of these topics in the coming weeks, and we look forward to receiving those recommendations.

5. Describe how regulatory interagency coordination has improved since the creation of the Financial Stability Oversight Counsel established by the Wall Street Reform Act. Provide specifics of how coordination has helped, either formally or informally, in your rulemaking process.

The Commission is committed to working closely, cooperatively, and regularly with our fellow regulators to strengthen our implementation of the regulatory structure established by the

Dodd-Frank Act and in carrying out our mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

We meet regularly, both formally and informally, with other financial regulators. SEC staff working groups, for example, consult and coordinate with the staffs of the CFTC, Federal Reserve Board, and other federal regulators on implementation of Title VII of the Dodd-Frank Act. As you know, the SEC's rules will apply to security-based swaps, while the CFTC's rules will apply to swaps. Our objective is to establish consistent and comparable requirements, to the extent possible, for swaps and security-based swaps, taking into account differences in products, participants, and markets, and this objective will continue to guide our efforts as we move toward adoption. While, in some instances, the CFTC has released proposed rules before we have, in each of these cases, the rules were the subject of extensive interagency discussions.

In addition, as required by the Dodd-Frank Act, we are working with the CFTC to adopt joint rules further defining key definitional terms relating to the products covered by Title VII and certain categories of market intermediaries and participants. Joint rulemaking regarding key definitions will help to ensure regulatory consistency and comparability, and thus help to prevent gaps, regulatory arbitrage, and confusion.

Commission staff also is working closely with the Federal Reserve Board and the CFTC to develop, as required by Title VIII of the Dodd-Frank Act, a common framework to supervise financial market utilities, such as clearing agencies registered with the SEC, that are designated by the Financial Stability Oversight Council as systemically important. This framework provides for consulting and working together on examinations of systemically important financial market utilities consistent with Title VIII. This added layer of protection, or "second set of eyes," called for by the Act will help provide assurance that the U.S. financial system receives well coordinated oversight from all relevant supervisory authorities.

There has also been an extensive, collaborative effort by the Federal banking agencies, the SEC, the CFTC and our respective staffs to implement a number of other Dodd-Frank Act provisions. For example, the Commission joined its fellow regulators in issuing for public comment proposed risk retention rules for asset backed securities, the "Volcker Rule" prohibiting banking entities from engaging in proprietary trading and having certain relationships with hedge funds and private equity funds, and a rule governing the incentive-based compensation arrangements of certain financial institutions. We also jointly adopted with the CFTC, based on consultation with FSOC, a new rule that requires hedge fund advisers and other private fund advisers registered with the Commission to report systemic risk information on a new "Form PF."

Finally, because the world today is a global marketplace and what we do to implement many provisions of the Act will affect foreign entities, the Commission is consulting bilaterally and through multilateral organizations with counterparts abroad. The SEC and CFTC, for example, are directed by the Dodd-Frank Act to consult and coordinate with foreign regulators on the establishment of consistent international standards with respect to the regulation of swaps, security-based swaps, swap entities, and security-based swap entities. We believe that the

IOSCO Task Force on OTC Derivatives Regulation, which the SEC co-chairs, and other international forums will help us achieve this goal.

Thank you for your letter and your interest in our rulemaking approach. If you have any questions or would like to further discuss this letter, please feel free to contact me at (202) 551-2100, or have your staff call Eric Spitler, Director of the Office of Legislative and Intergovernmental Affairs, at (202) 551-2010.

Sincerely,

Mary L. Schapiro
Chairman