**Testimony on "Oversight of the SEC's Division of Corporation Finance"**

**By William H. Hinman, Director**
**Division of Corporation Finance**
**U.S. Securities and Exchange Commission**

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**Subcommittee on Capital Markets, Securities, and Investment**
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Chairman Huizenga, Ranking Member Maloney, and Members of the Subcommittee:

Thank you for inviting me to testify today on behalf of the U.S. Securities and Exchange Commission (SEC or Commission) about the Division of Corporation Finance's (Division) activities and responsibilities. Since arriving at the SEC in May 2017, I have felt privileged to serve alongside such dedicated and talented individuals. Every day I am more impressed by the depth and breadth of the staff's work and experience.

The mission of the Commission is to protect investors, and maintain fair, orderly, and efficient markets, and facilitate capital formation. The Division promotes the agency's mission by overseeing the review of disclosures by companies to the investing public and seeking to ensure that investors have access to materially complete and accurate information upon which to make voting and investment decisions.

The Division's authority is derived primarily from the Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act). The Securities Act regulates offers and sales of securities in the United States. Unless an offering qualifies for an exemption from registration, the Securities Act requires the company offering securities to file a registration statement containing information about itself, the securities it is offering, and the offering. The Exchange Act requires companies that have an effective registration statement or that meet certain thresholds to report information regularly about their business operations, financial condition, and management. These companies must file periodic reports and other information with the SEC.

As part of its work, the Division engages in selective reviews of companies' Securities Act and Exchange Act filings. We also administer the regulations under which registered and exempt offerings are conducted by providing interpretive advice about the securities laws and corresponding regulations and making rulemaking recommendations to the Commission on matters within the Division's expertise. Further, Division staff stands ready to assist companies in complying with the federal securities laws, and we want to make sure that message is reaching everyone. The Division staff has engaged in outreach efforts to make sure that companies know we are open for business and that we want to be as transparent and collaborative as possible.

This testimony provides a summary overview of those activities, with a focus on current Division initiatives and priorities.

**Overview of Disclosure Review**

The Division regularly and systematically reviews the disclosures and financial statements of reporting companies to monitor and enhance compliance with disclosure and accounting requirements. The Sarbanes-Oxley Act of 2002 requires the Commission to review the financial statements of companies reporting under the Exchange Act at least once every three years and more frequently where circumstances warrant. In addition to these mandated reviews, the Division selectively reviews registration statements and other filings made for public offerings, business combination transactions, and proxy solicitations. The Division's staff has broad discretion to select filings for review, and we continuously work to allocate our resources effectively.

Division staff members conducting filing reviews are assigned to one of eleven offices that have specialized industry, accounting, and disclosure expertise. In the course of a filing review, the staff will conduct an evaluation of company disclosure and will, as appropriate, issue comments to elicit better compliance with applicable disclosure requirements. We concentrate our resources on critical disclosures that appear to conflict with Commission rules or applicable accounting standards and on disclosures that appear to be materially deficient in explanation or clarity.

In response to staff comments, a company may amend its financial statements or other disclosures to provide additional or enhanced information in the filing that is subject to the review or, in some instances, may provide improved disclosure in future filings. A company may also provide supplemental information so the staff can better understand the company's disclosure decisions. The comment process also provides a mechanism to respond to evolving trends in the marketplace. The Division coordinates with other offices and divisions within the Commission on complex or interconnected issues that arise within these reviews. Where appropriate, the Division refers matters to the Commission's Division of Enforcement.

To increase the transparency of the filing review process, after the Division completes a filing review, the comment letters and company responses to those letters are made public on the SEC website. Each comment letter is designed to elicit more effective disclosure based on the specific facts and circumstances of the company and should not be interpreted as generally applicable to all companies.

**Facilitating Capital Formation and Investment Opportunities**

Against the backdrop of a declining number of U.S. public reporting companies, the Division has been looking at ways to make the public company alternative more attractive. While there are many reasons why companies may choose not to go public, to go public at a later stage, or to exit the public markets, to the extent we are able to attract more companies to join our public company reporting system and do so at an earlier stage, it will ultimately benefit companies, our markets and investors. Companies that go through the evolution from a private company to a public reporting company emerge as better companies with better disclosure. Markets as a whole benefit from the increased transparency and the better-informed price discovery that occurs when more companies participate in the public markets. Investors benefit

when there are more companies in which to invest. Although initial public offerings (IPOs) and developing public companies may not be suitable for all investors, more IPOs occurring at an earlier stage means a wider range of investors are able to more fully participate in the growth of companies. It is far more efficient for retail investors to invest in companies through our public markets than our private markets. Increasing the number of public companies is becoming more and more important as Americans are increasingly relying upon their own investments for retirement.

With this in mind, the Division is examining our interpretive advice, our processes, and how we interact with registrants, investors, and others, to see where we can make enhancements while maintaining important investor protections.

***Recent Initiatives***

In July 2017, the Division expanded the non-public review process for draft registration statement submissions to all companies conducting certain securities offerings, including an IPO and follow-on offerings within one year of an IPO. This expands on the confidential submission process established for emerging growth companies (EGCs) in response to the Jumpstart Our Business Startups (JOBS) Act of 2012.

Companies are taking advantage of this process. We have received draft submissions for more than 20 IPOs of companies that exceed one billion dollars in revenue or otherwise do not qualify to submit as EGCs, and from over 50 companies engaged in follow-on offerings. These options simplify the capital-raising process for first-time registrants and newly-public companies by allowing them to submit their proprietary information on a non-public basis while the staff reviews their draft offering documents. This can reduce uncertainty for these companies and allow them to raise capital with less exposure to market volatility, which benefits companies and their investors.

The Division also recently provided greater clarity about what financial information is required when submitting draft registration statements or filing publicly. As a result, companies can avoid the time and expense of preparing and filing interim financial information if that information will be superseded by the time the filing is first made publicly available.

While these accommodations are making a positive difference to issuers, the Division is still able to perform fulsome filing reviews, and investors continue to receive the full array of financial information and other required disclosure when the company files publicly.

The Commission's interpretive guidance on pay ratio disclosure was another constructive initiative. In September 2017, the Commission issued interpretive guidance to assist companies in their efforts to comply with the pay ratio disclosure requirement in a cost efficient manner consistent with the statutory requirement. The Division also updated its interpretations and closely collaborated with staff in the Division of Economic and Risk Analysis (DERA) to provide assistance on calculating the pay ratio and using statistical sampling. The Commission and staff actions reflect feedback the SEC received as companies worked to implement the requirement and underscore the flexibility incorporated into the rule.

The Division also worked closely with the Commission's Office of the Chief Accountant to issue interpretations related to the new tax reform law when it was enacted in late December 2017. These interpretations reflect a practical approach to working with companies as they integrate new laws into their financial accounting and reporting.

***Cybersecurity***

In February 2018, the Commission issued a statement and interpretive guidance to assist public companies in preparing their disclosures about cybersecurity. This guidance reinforces and expands upon guidance the Division issued in 2011. The new guidance provides the Commission's views about public companies' obligations under our laws and regulations with respect to matters involving cybersecurity risk and incidents and describes the importance of comprehensive policies and procedures related to cybersecurity events, including appropriate disclosure controls. The guidance reminds companies that these disclosure controls are important in their own right and that they play a role in ensuring that their insider trading policies and procedures guard against corporate insiders trading during the period between a company's discovery of a cybersecurity incident and public disclosure. It also addresses the importance of selective disclosure prohibitions in the cybersecurity context.

***Cryptocurrencies and ICOs***

Cryptocurrency and initial coin offering (ICO) markets are additional areas where the Division has been focusing a significant amount of attention and resources. These markets have grown rapidly and the technology on which cryptocurrencies and ICOs are based has the potential to be transformative. If done consistent with the federal securities laws, ICOs have the potential to facilitate capital formation. At the same time, we are aware of the potential for fraud and abusive market practices and we are mindful of our need to see that investors are protected and are receiving the information they need to make informed investment decisions.

The Division is taking a balanced regulatory approach that both fosters innovation and protects investors. For example, in the area of ICOs, we assisted in the development of the SEC's July 2017 Report of Investigation regarding the application of the federal securities laws to those products. Our staff meets regularly with entrepreneurs and market professionals interested in developing new and innovative investment products in compliance with the federal securities laws. We also participate in the SEC's Distributed Ledger Technology Working Group, which focuses on emerging applications of distributed ledger technology in the financial industry. As this area continues to evolve, we will encourage new developments that facilitate capital formation while maintaining a focus on investor protection.

**Small Business Initiatives**

A significant and growing amount of capital is being raised pursuant to non-registered offering exemptions. Congress and the Commission have taken notable steps in recent years to further develop a capital formation ecosystem that includes a scaled disclosure regime and

provides small and medium-sized businesses additional capital raising avenues while maintaining robust investor protections.

Since the Commission adopted amendments to Regulation A in 2015, the number of qualified offerings and the aggregate amount sought in Regulation A offerings has substantially increased relative to the pre-amendment numbers. Seventy-eight issuers in 185 qualified offerings disclosed raising a total of approximately $670 million through the end of 2017.

In addition to Regulation A, the use of other JOBS Act exemptions is also increasing. Rule 506(c) permits the use of general solicitation if sales are limited to accredited investors and the issuer takes reasonable steps to verify that the purchasers are indeed accredited investors. In 2017, $147 billion was raised using Rule 506(c). We are also seeing small growth businesses begin to use crowdfunding as a securities offering method. Between May 2016, when Regulation Crowdfunding went into effect, and December 2017, there were 643 offerings initiated under the regulation's exemption, with a reported total amount raised of $53 million.

As the exempt offering market continues to grow and evolve, the Commission and staff from Corporation Finance and other divisions continue to monitor developments, gather and examine data, and assess the effectiveness of these new exemptions in terms both of their ability to raise capital for smaller companies as well as providing appropriate protections for investors in these markets. Staff will be conducting look-back reviews of the impact of Regulation Crowdfunding and Regulation A on capital formation and investor protection. The Division also is considering recommending that the Commission propose amendments to expand the definition of accredited investor under Regulation D of the Securities Act.

Further, we recognize that as new and enhanced exemptions provide additional avenues for capital formation, small companies and their investors also could benefit from reduced regulatory complexity. The Division is considering ways to harmonize and streamline the Commission's exempt offering rules in order to enhance their clarity and ease of use.

As part of the Division's efforts to improve capital formation opportunities, we seek to engage with a wide range of interested parties at meetings and conferences around the United States. In October, Chairman Clayton and I attended a high tech jobs summit in Montana. The summit brought together lawmakers, regulators, and businesses – both large and small – to discuss job creation and capital formation, among other things. In November 2017, the Commission held its annual Government-Business Forum on Small Business Capital Formation in Austin, Texas. In addition to this forum, Division staff continues to participate in a number of outreach events that provide opportunities to hear from smaller companies seeking to grow their businesses. Each of these opportunities proves useful to hear views from issuers, investors, and other market participants about what is working and what could be enhanced under our regulatory regime. As you know, Congress recently created a new Office of the Advocate for Small Business Capital Formation at the SEC. Some of the responsibilities that traditionally have been staffed in the Division – such as organizing the Government-Business Forum on Small Business Capital Formation and facilitating the work of the Small Business Capital Formation Advisory Committee – will be handled by that new office. I look forward to working collaboratively with that new office.

Title VII of the JOBS Act required the Commission to provide online information and conduct outreach to inform small and medium-sized businesses, as well as businesses owned by women, veterans, and minorities, of the changes made by the JOBS Act. Division staff engage in outreach events throughout the year that are tailored to these business communities, informing them of different capital raising options and listening to feedback on what is working in their communities and what could be enhanced under our regulatory regime. Division staff also continue to modernize and streamline the Division's website and online resources. As part of this effort, in 2017, the Division reorganized its small business website, which provides easily accessible and user-friendly resources on the various capital raising options available to small businesses, including the exemptions from registration.

**Upcoming Priorities**

In addition to the capital formation and small business initiatives discussed above, the Division continues to work on a full rulemaking agenda, with a focus on reforms to make our disclosure regime more effective.

***Smaller Reporting Company Definition***

The staff is working to complete a recommendation for the Commission's consideration to raise the financial thresholds below which companies would qualify for "smaller reporting company" eligibility. As proposed, the amendments would enable a company with less than $250 million of public float to provide scaled disclosures as a smaller reporting company, as compared to the $75 million threshold under the current definition. In addition, if a company does not have a public float, it would be permitted to provide scaled disclosures if its annual revenues are less than $100 million, as compared to the current threshold of less than $50 million in annual revenues.

***Disclosure Effectiveness***

In recent years, the Division has undertaken an initiative to improve public company disclosure, working to identify disclosure requirements that the Commission can simplify and make more effective. The Division is reviewing the disclosure requirements in Regulation S-K, which provides requirements for public company disclosure, and Regulation S-X, which provides requirements for financial statements, and is considering ways to improve the disclosure regime for the benefit of both companies and investors. The goal is to comprehensively review the requirements and make recommendations on how to update them to facilitate timely, material disclosures by companies and shareholders' access to that information. Initially, the review is focusing on the business and financial disclosures required by periodic and current reports, Forms 10-K, 10-Q, and 8-K.

In October 2017, the Commission voted to propose amendments to modernize and simplify Regulation S-K as mandated by the Fix America's Surface Transportation (FAST) Act. As proposed, the amendments would change exhibit filing requirements and the related process for confidential treatment requests and would make changes to Management's Discussion and

Analysis that would allow for flexibility in discussing historical periods. The Division is preparing recommendations for the Commission to finalize these amendments.

The Division also is developing recommendations for final rules to update and simplify disclosure requirements that may have become outdated, overlapping, or duplicative with other Commission rules or U.S. GAAP. The Division is developing recommendations for proposals to amend the rules that affect the disclosure of financial information required in Regulation S-X and for updating certain of our Industry Guides to modernize industry-specific disclosure requirements.

***Dodd-Frank Act Requirements***

In addition to disclosure simplification, the Division is also working to fulfill other rulemaking responsibilities. Last year Congress disapproved the Commission's rules that implemented the Dodd-Frank Act requirement that resource extraction issuers disclose payments made to governments for the commercial development of oil, natural gas, or minerals. The Division is reviewing all aspects of those rules in order to identify appropriate changes consistent with the Congressional Review Act and is preparing recommendations for a proposal for the Commission's consideration. The Division also is looking at possible revisions to the Commission's Conflict Minerals Rule in light of portions of that rule being set aside as a result of litigation. The Division also continues to work on finalizing the executive compensation rulemakings required by the Dodd-Frank Act – hedging, clawbacks, and pay versus performance. The Commission has issued proposals and received public comment on all of these provisions.

***Capital Formation***

The Division is also examining our rules to explore whether there are changes that could be made to encourage more companies to go through the U.S. IPO process. The JOBS Act provided an exemption for EGCs and persons authorized to act on their behalf to communicate with potential investors that are qualified institutional buyers or institutional accredited investors prior to or following the filing of a registration statement to "test the waters" for an offering. The Division is considering recommending that the Commission propose amendments to extend the "test the waters" provision to non-EGCs.

All of our rulemakings have benefitted from public comments and we will continue to encourage comments on any new proposals that the Commission issues.

**Conclusion**

Thank you again for inviting me to discuss the Division's activities and responsibilities. I also would like to emphasize that the overview that I have shared with you today does not fully capture the tremendous commitment of the staff of the Division to our mission of capital formation and investor protection. I am happy to answer your questions.