

Testimony on Oversight of the SEC's Division of Corporation Finance
By Erik F. Gerding, Director
Division of Corporation Finance
U.S. Securities and Exchange Commission

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Subcommittee on Capital Markets

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Chair Wagner, Ranking Member Sherman, and Members of the Subcommittee:

Thank you for inviting me to testify today about the activities and responsibilities of the Securities and Exchange Commission's Division of Corporation Finance (the "Division"). It is my honor and pleasure to appear before you today to discuss the Division's work. I am testifying in my official capacity as the Director of the Division of Corporation Finance, but my testimony does not necessarily reflect the views of the Commission, the Commissioners, or other members of the staff.

Since joining the SEC in October 2021, I have felt privileged to serve the Commission and lead such a talented and dedicated staff, particularly during a period of incredible change in securities markets.

The mission of the SEC is to protect investors; maintain fair, orderly, and efficient markets; and facilitate capital formation. In support of the Commission's tripartite mission, the Division of Corporation Finance seeks to ensure that investors are provided with material information in order to make informed investment decisions, both when a company initially offers its securities to the public and on an ongoing basis as it continues to give information to the marketplace. The Division also provides assistance to companies with respect to compliance with SEC rules and forms and makes recommendations to the Commission regarding new rules and revisions to existing rules.

The rules and regulations that the Division administers arise primarily under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "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 a company offering securities to the public to file a registration statement containing information about itself, the securities it is offering, and the offering. The Exchange Act imposes ongoing, periodic reporting requirements on companies that have securities trading on a national securities exchange or with widely-held classes of securities. Any company with a class of securities registered under the Exchange Act is required to report information regularly about their business operations, financial condition, and management in reports publicly filed with the SEC.

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

Disclosure Review Program

The Division reviews the disclosures and financial statements of reporting companies to monitor and enhance compliance with disclosure and accounting requirements under the federal securities laws and Commission rules. The Sarbanes-Oxley Act of 2002 requires the Commission to review the disclosures and 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 in connection with public offerings, business combination transactions, and proxy solicitations. The Division concentrates its review resources on disclosures that appear to be inconsistent with Commission rules or applicable accounting standards, or that appear to be materially deficient or that lack clarity.

Division staff members conducting filing reviews are assigned to offices that have specialized industry, accounting, and disclosure expertise. In the course of a filing review, the staff conducts an evaluation of company disclosures and will, as appropriate, issue comments to elicit better compliance with applicable disclosure requirements.

In response to staff comments, a company may amend its financial statements or other disclosures to provide enhanced information in the filing that is subject to the review or, in some instances, may provide improved disclosure in future filings. The comment process provides a mechanism to respond to evolving trends in the marketplace. This process helps deter fraud and facilitates investor access to information necessary to make informed investment decisions, thus enhancing the efficiency of the capital markets.

To provide transparency into the filing review process, after the Division completes a filing review, the comment letters and company responses to those letters are made public through the Commission's EDGAR database. Comments are intended 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.

The Division does not evaluate the merits of any transaction or determine whether an investment is appropriate for any investor. The Division's review process is not a guarantee that the disclosure is complete and accurate. Responsibility for complete and accurate disclosure lies with the company and others involved in the preparation of a company's filings.

We continue to feel the impact of the surge in initial public filings from 2021 and 2022. We have seen an approximately 18% increase in the number of active public companies since 2021 and we continue to review thousands of annual reports each year.

Last fall, we added two new industry offices to the Division's Disclosure Review Program, the Office of Crypto Assets and the Office of Industrial Applications Services. These offices provide focused review of filings in these industries to further the Division's work to promote capital formation and protect investors. The creation of these new offices enabled the

Disclosure Review Program to better focus its resources and develop specialized expertise in these spaces.

Rulemaking Recommendations and Regulatory Assistance

In addition to the filing review process, the Division recommends to the Commission new rules, or changes to existing rules, as needed to improve investor protection and to facilitate capital formation. We also help companies and their advisors to comply with Commission rules by communicating the staff's views in a variety of forms such as Staff Legal and Accounting Bulletins, "Dear Issuer" letters, staff Disclosure Guidance Topics, updates to the Division's Financial Reporting Manual, no-action and interpretive letters, and Compliance and Disclosure Interpretations ("C&DI"). The Division also provides legal and accounting advice to the Commission and other divisions and offices as needed.

The Commission has adopted eleven rules or rule amendments recommended by the Division and proposed another six rules in the last two years. The Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions (the "Reg. Flex. Agenda") provides an update on the Commission's pending proposed and final rulemakings.¹ These rulemakings have benefitted from public comments, and we will continue to encourage comments from the public on any new proposals that the Commission issues.

Public Guidance

We continually monitor developments in the markets to ensure that the guidance the Division is giving to issuers and their advisers is as clear, robust, and helpful as possible. From time to time, market and global events necessitate that we provide additional guidance to market participants to assist companies in meeting their disclosure obligations. In an effort to increase "one-to-many" communications with the public and help companies consider the impact that current events and market developments may have on their disclosure obligations, we have issued a range of guidance in the last two years, including "Dear Issuer" letters regarding recent developments in crypto asset markets, disclosure pertaining to Russia's invasion of Ukraine, and risks associated with investing in China-based companies.² "Dear Issuer" letters provide a set of sample comments that companies may expect to receive, depending on their individual facts and

¹ Release No. 33-11178 (April 11, 2023).

² See e.g., Sample Letter to China-Based Companies (Dec. 20, 2021), available at <https://www.sec.gov/corpfin/sample-letter-china-based-companies>; Sample Letter to Companies Regarding Disclosures Pertaining to Russia's Invasion of Ukraine and Related Supply Chain Issues (May 3, 2022), available at <https://www.sec.gov/corpfin/sample-letter-companies-pertaining-to-ukraine>; Sample Letter to Companies Regarding Recent Developments in Crypto Asset Markets (Dec. 8, 2022), available at <https://www.sec.gov/corpfin/sample-letter-companies-regarding-crypto-asset-markets>. These staff statements, and other staff statements referenced herein, represent the views of the staff of the Division of Corporation Finance. These staff statements are not rules, regulations, or statements of the Securities and Exchange Commission ("Commission"). The Commission has neither approved nor disapproved their content. These statements, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

circumstances, during the filing review process. These letters can also help companies improve the relevance and clarity of disclosures by knowing what the staff is focusing on in their reviews.

Staff Legal Bulletins (“SLBs”) summarize the Commission staff’s views regarding various aspects of the federal securities laws and SEC regulations and represent interpretations and policies followed by the Division. Staff Accounting Bulletins (“SABs”) reflect the Commission staff’s views regarding accounting-related disclosure practices and represent the interpretations of the Division and the Office of the Chief Accountant.

Division staff also issues no-action letters, compliance and disclosure interpretations, and staff statements that provide the staff’s views regarding novel disclosure and securities law issues.³ Separately, Division staff responds to no-action requests from companies seeking to exclude shareholder proposals from their proxy materials. This proxy season, Division staff processed and responded to approximately 180 of those requests.

All of these types of communications represent the views of the staff and are therefore not legally binding.

Legal and Interpretive Guidance

In addition to providing public guidance, the Division serves as a resource for investors, businesses, and their advisers. Our Office of Chief Counsel responds to legal and interpretive questions from the public about the Securities Act, the Exchange Act, and the Trust Indenture Act. Our Office of Small Business Policy provides guidance to small businesses seeking to raise capital or comply with reporting requirements. Each year this office responds to approximately 1,000 requests for assistance from the small business community. Our Office of Mergers and Acquisitions fields questions regarding business combinations, including domestic and cross-border tender offers, contested change-of control transactions, and beneficial ownership reporting. For foreign issuers or domestic issuers undertaking offshore offerings, our Office of International Corporate Finance serves as our subject matter experts regarding specific registration, reporting, deregistration, and exemptive matters.

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

³ See e.g., Compliance and Disclosure Interpretations, available at <https://www.sec.gov/divisions/corpfin/cfguidance>; Staff Statement on Select Issues Pertaining to Special Purpose Acquisition Companies (Mar. 31, 2021), available at <https://www.sec.gov/corpfin/announcement/staff-statement-spac-2021-03-31>; Staff Statement on the Holding Foreign Companies Accountable Act and the Consolidated Appropriations Act, 2023 (Apr. 6, 2023), available at <https://www.sec.gov/corpfin/announcement/statement-hfcaa-040623>.

capture the tremendous commitment of the staff of the Division to our mission of promoting capital formation and investor protection. I am happy to answer your questions.