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SEC to Hold Roundtable on Short-Termism and Interplay with Periodic Reporting System

In a welcome development, SEC Chairman Jay Clayton has announced that the SEC Staff will hold a roundtable this summer to discuss the impact of short-termism on the management of public companies and the interplay with the SEC's periodic reporting system and regulatory requirements. The roundtable "will seek to explore the causes of short-termism and to facilitate conversations on what market-based initiatives and regulatory changes could foster a longer-term performance perspective in American companies."

Noting that Main Street investors are largely responsible for funding their own retirement and other financial needs, together with the increase in life expectancies, there should be an even greater focus on long-term results, while maintaining liquidity as needed:

> Our public capital markets have a thirst for high-quality, timely and material information regarding company performance and corporate events. . . . But we should ask ourselves whether our disclosure framework and other regulations have encouraged a focus by companies—and not just securities traders—on the short-term over the long-term. . . .
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> An undue focus on short-term results among companies may lead to inefficient allocation of capital, reduce long-term returns for Main Street investors, and encumber economic growth. While the problems associated with short-termism have garnered increased attention, there is a need for further dialogue on the causes of and potential solutions to the issue.

While it will be up to the SEC Staff to develop the specific agenda for the roundtable, Chairman Clayton noted a few topics he thought should be addressed:

- Has short-termism contributed to the declining number of public companies, and particularly whether the pressure on short-termism has discouraged private investors from taking companies public?
- Can the SEC reduce reporting burdens for public companies while facilitating better disclosure for long-term investors considering, among

other things, whether quarterly earnings releases could satisfy some quarterly reporting obligations and whether it is possible to streamline quarterly requirements?

- Can certain public companies, particularly smaller ones, be given the option to determine the frequency of their periodic reporting?

- How can market practices be changed to promote long-termism and further public company investment? Chairman Clayton asked specifically "the extent to which certain activist practices, such as 'empty voting' (*e.g.*, acquiring voting rights over shares but having little or no economic interest in the shares), are factors that drive short-term focus."

We are hopeful that the SEC Staff will also use the roundtable to explore whether the Schedule 13D ten-day filing window has outlived its usefulness and should be closed. In addition, the SEC Staff should consider whether other disclosure requirements should be mandated for Schedule 13D and 13G and Form 13F filers, including investment companies and investment advisors, on topics such as: their basic investment strategy as to long-term growth, environmental matters, social matters (particularly as to human capital) and governance; their investments in activist funds; and whether they have adopted the stewardship and engagement principles endorsed by the Investor Stewardship Group or *The New Paradigm: A Roadmap for an Implicit Corporate Governance Partnership Between Corporations and Investors to Achieve Sustainable Long-Term Investment and Growth* proposed by the World Economic Forum, and, if not, the governance, stewardship and engagement principles the entity follows.

We are optimistic that the upcoming SEC Staff roundtable can be a catalyst to move markets, investors and companies away from short-termism and towards long-term value creation that benefit the United States' economy and create greater prosperity for all of the constituencies involved. Together with other SEC initiatives, such as disclosure simplification reform and a renewed focus on proxy advisor regulation, the roundtable demonstrates the SEC's ongoing commitment to ensuring that the securities laws are designed to meet the needs of modern capital markets.

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