Speech

Keynote Address at the SEC-Rock Center on Corporate Governance Silicon Valley Initiative

Chair Mary Jo White

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Introduction

Thank you Jina [Choi] for that kind introduction and for your leadership of the San Francisco Regional Office. It is always good to be back at Stanford,[1] and it is an honor to speak at the SEC's and Rock Center's Silicon Valley Initiative. This is an important event that brings together regulators, academics, lawyers and entrepreneurs to discuss the issues impacting the start-up, venture capital and private equity worlds rooted here in this cutting edge center of technological innovation. It is essential that the Commission fully engage with Silicon Valley, and participants in this important market across the country, so that we can better understand the unique features of its investors and financings. This Valley-SEC dialogue, which I hope becomes a permanent fixture, can only make the Commission a more effective regulator and better able to protect all investors.

We all know the significant impact that technology innovation coming from Silicon Valley continues to have on our lives. We see the effect everywhere –companies that trace their start to basements, shared office spaces and classrooms are changing how we get around our cities, how we analyze big data, how we find places to stay when we travel, how we communicate with each other, and even how we put satellites in space.

As technology has evolved, so too have the financial markets that support it. New models for how these companies are funded and how investors unlock their value are changing the landscape of private start-up financing and the IPO market. SEC rulemakings have also opened new ways to raise start-up capital with general solicitation allowed in private offerings,[2] securities-based crowdfunding campaigns coming soon,[3] and an updated and expanded Reg A (known as Regulation A+).[4] New approaches to secondary market liquidity have sprouted. New types of investors have entered the mix, including mutual funds. All of these factors are contributing to the decision made by more and more companies to stay private longer.

I thought I would spend my time with you tonight discussing some of the opportunities, challenges, and risks in these rapidly changing markets. A very important part of the SEC's mission is to facilitate capital formation, so it is important that our rules and regulatory actions create an environment that fosters innovation and growth. But entrepreneurs and issuers in these new markets should also recognize that protecting investors is at the core of the SEC's mission and it should be something that they too hold at the core of what they do. Being a private company obviously does not mean that you can disregard the interests of investors. Indeed, being a private company comes with serious obligations to investors and the markets. Whether the source of the obligation is the federal securities laws or the fiduciary duty that is owed to shareholders, the resulting candor and fair dealing should be fundamentally the same. And beyond any specific regulatory requirements, some of the principles that characterize public companies – transparency with investors, controls on financial reporting, strong corporate governance – have applicability and relevance to private companies, especially those pre-IPO companies that aspire to go public, and should not be overlooked or avoided, whether or not mandated by federal law or an SEC regulation.

For the new and evolving markets to be successful, all investors need confidence that they are being treated fairly and that the full range of risks are transparently disclosed. We must work together to ensure that this confidence is well-placed, so that investors feel comfortable providing the capital essential for business development and growth. Only then can we reap the full rewards of the creativity, genius, and innovation for which this Valley is famous.

The Challenges of Pre-IPO Financing

Accuracy of Company Information

Let me first focus on the accuracy of disclosures made by pre-IPO companies. It is undisputed that venture investing is not for the faint of heart. There is certainly nothing novel in this Valley about pre-revenue start-ups attracting millions of dollars, also often much less, from angels, traditional VC firms, and more recently, private equity firms, all looking to add to their portfolios that moon-shot, once-in-a-fund investment opportunity. The investors are sophisticated and generally understand well the parameters of the private securities markets – they are aware that most of their investments will fail. While the common refrain is that 9 out of 10 start-ups fail,[5] an equally interesting statistic from one post-mortem analysis is that 70 percent of failed start-ups die within 20 months after their last financing, having raised an average of $11 million.[6] In other words, not only are these investments highly risky, they fail quickly too.

From a securities law perspective, the theory behind the private markets is that sophisticated investors do not need the protections offered by the robust mandatory disclosure provisions of the 1933 Securities Act.[7] So, if those participants choose – with eyes wide open – to invest in private companies at valuations that may be ethereal or overinflated, who loses when the truth behind inflated valuations is revealed? I think we all do. Not just the VC and private equity funds, but also smaller retail investors and the next Stanford student whose great idea needs funding, but investors are unwilling to take a bet on her because they were burned last time. To better understand what I mean, we need to look more closely at how these deals are done and structured, as well as the downstream effects on other market participants.

A current feature of the pre-IPO financing market that puts these questions in sharp (and local) relief is one that has gathered considerable attention recently – unicorns. Of course, this audience knows that I am speaking not of the creatures of fantasy, but of private start-up firms with valuations that exceed $1 billion. By one count, there are nearly 150 unicorns worldwide, many based here in Silicon Valley.[8] And, they do not appear to be an endangered species. One survey shows that there were 52 unicorn financings in the last three quarters of 2015 compared to 37 such financings over the 12 months that ended in March 2015.[9]

Beyond the hype and the headlines, our collective challenge is to look past the eye-popping valuations and carefully examine the implications of this trend for investors, including employees of these companies, who are typically paid, in part, in stock and options. These are areas of concern for the SEC and, I hope, an important focus for entrepreneurs, their advisers, as well as investors.

At the SEC, the questions we are asking do not fundamentally differ from the questions we ask about all transactions. They include whether the information supplied to investors is accurate and complete – that is, whether it accurately reflects the performance and prospects of the company. Making sure that is so becomes more compelling when the transactions are smaller and the investors are more retail. And, for those involved in advising, investing and nurturing unicorns, there is an important related question – how do $1 billion valuations affect all of the relevant investors – both those investing in the unicorn round, and those that came before and after, whether in private or public transactions.

It is axiomatic that all private and public securities transactions, no matter the sophistication of the parties, must be free from fraud. Exchange Act Section 10(b) and Rule 10b-5 apply to all companies and we must be vigorous in ferreting out and punishing wrongdoers wherever they operate. In the unicorn context, there is a worry that the tail may wag the horn, so to speak, on valuation disclosures. The concern is whether the prestige associated with reaching a sky high valuation fast drives companies to try to appear more valuable than they actually are.[10]

Nearly all venture valuations are highly subjective. But, one must wonder whether the publicity and pressure to achieve the unicorn benchmark is analogous to that felt by public companies to meet projections they make to the market with the attendant risk of financial reporting problems.[11] And, yes that remains a problem. We continue to see instances of public companies and their senior executives manipulating their accounting to meet various expectations and projections.[12]

As I will discuss, the risk of distortion and inaccuracy is amplified because start-up companies, even quite mature ones, often have far less robust internal controls and governance procedures than most public companies. Vigilance by private companies about the accuracy of their financial results and other disclosures is thus especially critical.

The Challenges of New Models of Capital Formation

While we have our eye on unicorns, because of their outsized impact on our markets and investors, our primary focus is obviously much broader. One key and current area of focus for us at the SEC is on the three new methods that have recently been created by our rules for capital raising under the JOBS Act – Rule 506(c) of Regulation D (permitting general solicitation), Regulation A+ and Regulation Crowdfunding. In one way or another, all three are designed to foster new ways for smaller companies to access the capital markets, and we must ensure that the investor protections included as part of these new structures work as intended to foster capital formation in a transparent, safe and efficient way.

In contrast to the institutional investors that have typically been involved in the capital raising that has created unicorns, these capital formation tools can be used to, and in certain cases are expected to, raise money from retail investors. So, it should come as no surprise that we are closely looking at not only how well these tools are working for companies seeking to raise capital, but also how well they are protecting investors.

As an integral part of the implementation of each one of these new tools, I have drawn on the expertise of the staff across the agency and engaged them in a program that actively monitors the volume of such transactions, developing industry practices, how the implementing rules are working, and any instances of fraud or other rule violations. I have discussed before what these staff initiatives have found for general solicitation and Regulation A+. [13] Tonight, I will just touch on some of our thinking on the third offering tool of the JOBS Act – crowdfunding – which we adopted last fall and becomes effective in May.

<u>Crowdfunding Portals as the New Gatekeepers</u>

Crowdfunding is an evolving method of raising capital that has been used to raise funds through the Internet for almost any project that can garner sufficient interest. Before our regulation, individuals who contributed money to such ventures were essentially just "contributing" to the project – they were rewarded with a first of its kind product, a memento, or, in some cases, just the satisfaction that comes from being part of a worthy venture. But they were not "investors" – they could not share in the financial returns of the enterprise.

Regulation Crowdfunding will allow retail investors to acquire small equity stakes in new companies.[14] Significant excitement surrounds the use of securities-based crowdfunding, which we hope will fuel the development of a vibrant market. It is important, however, for this excitement not to be short-sighted by failing to keep the interests of investors paramount, which could quickly deliver a very damaging blow to the success of crowdfunding.

Our regulatory regime is designed to streamline capital formation while still providing robust investor protection. Importantly, the rule requires crowdfunding to be conducted by a registered broker or a funding portal, a new type of SEC registrant with an important role as an intermediary between those seeking capital and investors. Entrepreneurs here in Silicon Valley have developed many of these funding portals.

The funding portals were established with the primary purpose to serve as a classic gatekeeper and it is vital that they strongly function as such. As with general solicitation and Regulation A+, in addition to the strong regulatory protections built into the rule, we will closely monitor the funding portals through rigorous inspections and

examinations as well as close coordination with FINRA.[15] And to repeat, we are counting on brokers and funding portals to be bulwarks of investor protection in this space, and we will hold them to that responsibility.

Secondary Market Trading

Another set of issues that we are focused on in the private markets is the effect of valuations on secondary market participants. In the last wave of technology-focused IPOs, a secondary market was created, before the IPOs, by early stage employees that enabled them to sell their stock to outside investors. That market unfortunately had some problems – from unregistered broker-dealer activity to conflicts of interest and undisclosed compensation, to fraudulent offers of pooled investment vehicles that purported to hold pre-IPO stock.[16] These issues stemmed, in part, from the fact that secondary market investors did not have access to accurate information concerning the value of the companies in which they were investing, directly or indirectly.[17]

Care should be taken to avoid these issues in the new secondary market that is emerging, structured largely around derivative contracts and other novel ways to capture the economic interest in a pre-IPO company without actually transacting in its stock.[18] Depending on the structure of these derivative deals, errors or misconceptions in valuation could be amplified – whether through leverage or simply contracts built on faulty valuations.[19]

These secondary markets also raise other issues. A primary concern is whether they have, or will have, sufficient liquidity to allow investors to trade out of their positions and that they are transparent as to what that liquidity actually is. Recognizing that many participants in the secondary market may be “buy and hold” investors seeking exposure to late round pre-IPOs so they can profit from an eventual IPO or acquisition, we still must scrutinize these emerging platforms to ensure they provide a functioning market that operates within the parameters disclosed to investors. We must also look carefully at the role of gatekeepers such as the financial advisers who recommend these investments to their clients, and the potential registration regimes that might apply to the operators of these marketplaces.[20] Again, we are counting on the advisers to make those markets work fairly for investors, ensuring that they are well-informed of the significant risks they are taking.

The Challenges of Financial Controls and Corporate Governance

Another area in which pre-IPO companies, including unicorns, present risks for investors centers on financial controls and corporate governance. As many companies are choosing to stay private longer, Silicon Valley has become home to many private companies with valuations that exceed many listed ones that in another time would be publicly traded.[21] So, this is an issue for you.

Theories about the current slow-down in IPOs and why unicorns are staying private longer, while an important topic, are beyond the scope of my remarks tonight. Whatever the cause, there are several governance implications for the longer pre-IPO lifecycle. The IPO process is not just about raising capital. A public company commits to shed light on its operations and strengthen its controls and governance in ways not required of private companies. The securities laws and relevant listing standards, for example, require a company to form an audit committee; it must establish disclosure controls and procedures and create internal controls over financial reporting; the CEO and CFO must certify to the adequacy of those controls; and the company must be audited by a PCAOB registered firm.

This framework serves important investor and market protection functions, including facilitating a board’s attention to fulfilling its fiduciary duty to shareholders. Particularly as a company grows in operations, revenue, and scale, without adequate preparation and clear-eyed attention to the interests of investors, including employees, directors unschooled in these areas may find themselves overlooking critical aspects of their duty and companies will fail to have the controls necessary to assure accurate financial statements. While internal controls over financial reporting, and the regulations and certifications applicable to them, do not apply to private companies, all companies should consider enhanced structures and controls for conducting their operations, especially in anticipation of going public.

Rapidly growing enterprises present significant risks if the appropriate control structure is not in place. Time and again, we have seen companies go public and grow at a pace that exceeds their control structure. For example,

just last month, the Commission brought charges against a company and a former executive for inflating financial results to meet projections that it would double revenues in its first year as a public company.[22] Because, in part, of insufficient internal controls, the executive was able to direct his subordinates to obtain false sales and shipping documents and intentionally ship the wrong product to book sales.

As the latest batch of start-ups mature, generate revenue, achieve significant valuations, but stay private, it is important to assess whether they are likewise maturing their governance structures and internal control environments to match their size and market impact. Entrepreneurs and their advisers, venture capital and private equity investors, and those whose voices are heard and listened to in this market all have an interest in this issue and should be asking of start-ups: Is your board expanding from founders and venture seats to include outsiders with larger, and ideally public, company experience? Do you have the right regulatory and financial expertise on your boards to appropriately make decisions on behalf of all investors? Do you have the relevant expertise in the particular industry in which your company functions to bring to bear different viewpoints and spot critical issues? Is your company, in short, being run and governed for the benefit of all of your investors – a requirement whether the company is public or private and it is the responsibility of all market participants and their advisers to ensure that this overarching obligation is being fulfilled.

The Challenges of Fintech

Developments of significance in the SEC's and Silicon Valley's space extend well beyond those I have discussed. Time does not permit me to cover them all, but I would be remiss if I ended my remarks without mentioning fintech developments. Innovations in digital finance, many of which originated in Silicon Valley, have the potential to transform how our markets operate in virtually every respect—from streamlined market operations to more affordable ways to raise capital and advise clients. These innovations compel us to think carefully about how best to protect investors so they – and we – can have confidence in this growing and changing landscape.[23] In my closing minutes, I will just very briefly touch on three digital finance developments that are impacting the securities industry – blockchain, automated investment advice, and marketplace lending.

<u>Blockchain and Distributed Ledgers</u>

Blockchain technology has the potential to modernize, simplify, or even potentially replace, current trading and clearing and settlement operations. As you know, blockchain or distributed ledger is a database comprised of unchangeable transaction data in packages called blocks; each block in the chain is a record of transactions and contains information about the previous transactions. We are closely monitoring the proliferation of this technology and already addressing it in certain contexts. For example, Corporation Finance staff recently reviewed the registration statement of a company seeking to offer and sell digital securities, eliminating the need for intermediaries and allowing settlement on a nearly instantaneous basis.[24]

One key regulatory issue is whether blockchain applications require registration under existing Commission regulatory regimes, such as those for transfer agents or clearing agencies. We are actively exploring these issues and their implications. Our Advanced Notice of Proposed Rulemaking and Concept Release on transfer agent regulations issued last December, for example, asked for public comment on the use of blockchain technology by transfer agents and how such systems fit within federal securities regulations.[25] The insight from the comment process will help us evaluate how to best regulate these new innovations, and we encourage comment from all constituents.

<u>Robo-Advisors</u>

Another expanding technological development that has our close attention is automated investment platforms. These so called "robo-advisors" offer discretionary asset management services based on algorithms and provide minimal, if any, interaction between advisory personnel and investors. Many offer or appear to offer relatively low-cost investment advice, often with low account minimums, which has the positive potential to give retail investors broader, and more affordable, access to our markets.

Like all registered investment advisers, robo-advisors managing over $100 million in assets or otherwise registered with the Commission are subject to the Investment Advisers Act of 1940. So, in this area, the key questions are focused on whether and how a firm meets its Advisers Act obligations, as well as its fiduciary duties, when it provides only or primarily automated advice.

Providing financial advisory services electronically is different than the traditional adviser model, but in many respects our assessment of robo-advisors is no different than for a human-based investment adviser. Just like a conversation with a “real person” about a client’s financial goals, risk tolerances, and sophistication may be more or less robust, so too there is variation in the content and flexibility of information gathered by robo-advisors before advice is given. As part of our effort to monitor emerging automated investment models, staff from our National Exam Program are examining robo-advisors. Through these inspections, we deepen our knowledge of the range of services provided, as well as the challenges associated with different automated models. It is also an on-the-ground opportunity to proactively convey the need for these entities to operate within the regulatory framework of the Advisers Act.

Marketplace Lending

A third area we are closely monitoring is the continued growth of investments made via online marketplace lending platforms. This activity broadly refers to using investment capital and data-driven online platforms to lend either directly or indirectly to small business and consumers.[26]

As a threshold matter, the SEC evaluates these platforms through the lens of the federal securities laws – that is, are they offering securities and, if they are, are the offerings registered or made using an exemption. We are also concerned about the adequacy of the information received by investors in registered offerings. We expect that investors will receive disclosures about the loans underlying their investments, including information about the borrowers as well as the platform’s proprietary risk and lending models, that will enable them to make informed investment decisions – both at the time of investment and on an ongoing basis. As investors are attracted by potentially higher yielding but riskier marketplace loans as an investment strategy, information about the borrower’s ability to repay the loan underlying the investment is critical. Innovation in finance is welcome, but it must be built upon the disclosure of material information, which is the bedrock of the federal securities laws.

Marketplace lending has impacts beyond investors and the securities industry – there are also many consumer and banking considerations. That is why we are engaged with our fellow financial and consumer protection regulators, including the Department of Treasury, the Federal Reserve, the CFPB, OCC, FTC, and FDIC, to develop a broader understanding of the online marketplace lending industry, and regulatory initiatives that would enhance investor, consumer and borrower protections.

Conclusion

There are many other topics of mutual interest that I would like to discuss that our time together does not allow. But I hope that I have conveyed tonight how closely the SEC is monitoring and responding to developments in the private markets, as well as the relevant fintech phenomena. We, of course, recognize that the regulatory scaffolding around venture company advisers and private issuers is considerably scanter than that which frames registered investment advisers and public companies. And it only increases the challenge for the SEC that companies are increasingly choosing private status for longer, no doubt, in part, because they believe it is the best environment to foster the creativity, rapid cycling of success and failures, and yes, disruption that is the oxygen of technological innovation.

We have a keen interest in ensuring that all of the applicable rules and regulations are followed and that the pressures that shape these markets do not lead to fraud and harm to investors. And we will provide the appropriate regulatory oversight to protect investors so that they can have confidence in continuing to support the marvelous technologies for which this Valley is famous. You and your clients share in that responsibility and indeed are closer to the action in many ways and thus in a position to use a strong investor protection lens of your own as you go about raising money. And I challenge you to meet your responsibilities to investors with the same vigor you search for the next “new unicorn.”

At the SEC, we want the exciting innovations of the Valley and the expanded ways of funding them to succeed. Working together, we up the odds of both success for entrepreneurs and issuers and the strong protection of investors that is ultimately essential to the success of your ventures.

Thank you for inviting me to speak to you to tonight and enjoy what I know will be a lively and irreverent panel.

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[1] Chair Mary Jo White, *A Few Things Directors Should Know About the SEC*, remarks at the Twentieth Annual Stanford Directors' College (Jun. 23, 2014), *available at* https://www.sec.gov/News/Speech/Detail/Speech/1370542148863.

[2] *See Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings*, Release No. 33-9415 (Jul. 10, 2013), *available at* http://www.sec.gov/rules/final/2013/33-9415.pdf.

[3] *See Crowdfunding,* Release No. 33-9974 (Oct. 30, 2015*), available at* http://www.sec.gov/rules/final/2015/33-9974.pdf.

[4] *See Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A),* Release No. 33-9741 (Mar. 25, 2015), *available at* http://www.sec.gov/rules/final/2015/33-9741.pdf.

[5] *See e*.g., Erin Griffith, "Why startups fail, according to their founders," *Fortune* (Sep. 25, 2014), *available at* http://fortune.com/2014/09/25/why-startups-fail-according-to-their-founders/ ; Neil Patel, "90% of Startups Fail: Here's What You Need To Know About The 10%," *Forbes* (Jan. 16, 2015), *available at* http://www.forbes.com/sites/neilpatel/2015/01/16/90-of-startups-will-fail-heres-what-you-need-to-know-about-the-10/#2c27f8af55e1 .

[6] "The R.I.P. Report – Startup Death Trends." CB Insights (Jan. 18, 2014), *available at* https://www.cbinsights.com/blog/startup-death-data/ .

[7] *See Regulation D Revisions; Exemption for Certain Employee Benefit Plans*, Release No. 33-6683 (Jan. 16, 1987) [52 FR 3015] and *Report on the Review of the Definition of "Accredited Investor," p.2* (Dec. 18, 2015), *available at* http://www.sec.gov/corpfin/reportspubs/special-studies/review-definition-of-accredited-investor-12-18-2015.pdf.

[8] Scott Austin , Chris Canipe and Sarah Slobin , *The Billion Dollar Startup Club,* Wall Street Journal, *available at* http://graphics.wsj.com/billion-dollar-club/ .

[9] *See* Barry J. Kramer, Khang Tran and Nicole Harper, *The Terms Behind Unicorn Valuations,* Fenwick & West LLP (Dec. 31, 2015), *available at* https://www.fenwick.com/publications/pages/the-terms-behind-the-unicorn-valuations-as-of-december-31-2015.aspx .

[10] *See* Nick Bilton, *Is Silicon Valley in Another Bubble… and What Could Burst It?,* Vanity Fair (Sep. 1, 2015) ("When he asked the C.E.O. why he had valued his company at $1 billion, he was told, "We need to be worth a billion dollars to be able to recruit new engineers. So we decided that was our valuation."), *available at* http://www.vanityfair.com/news/2015/08/is-silicon-valley-in-another-bubble .

[11] *See e.g., The Unicorn List,* Fortune (ranked list of unicorns), *available at* http://fortune.com/unicorns/ ; *Unicorn Leaderboard,* TechCrunch (ranked list of current, former and emerging unicorns), *available at* http://techcrunch.com/unicorn-leaderboard/ .

[12] *See e.g.,* Press Release 2016-7, *SEC Charges 11 Bank Officers and Directors With Fraud* (Jan. 13, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-7.html; Press Release 2015-215, *SEC Charges Trinity Capital Corporation and Former Bank Executives With Accounting Fraud* (Sept. 28, 2015), *available at* http://www.sec.gov/news/pressrelease/2015-215.html; Press Release 2015-180, *SEC Charges Bankrate and Former Executives With Accounting Fraud* (Sep. 8, 2015), *available at*

https://www.sec.gov/news/pressrelease/2015-180.html; Press Release 2015-111, *SEC Charges CSC and Former Executives With Accounting Fraud* (June 5, 2015), *available at* https://www.sec.gov/news/pressrelease/2015-111.html; Press Release 2015-86, *SEC Announces Fraud Charges Against ITT Educational Services* (May 12, 2015), *available at* https://www.sec.gov/news/pressrelease/2015-86.html; Press Release 2015-24, *SEC Charges Chicago-Area Alternative Energy Company for Accounting and Disclosure Violations* (Feb. 5, 2015), *available at* http://www.sec.gov/news/pressrelease/2015-24.html; Press Release 2014-69, *SEC Charges CVS With Misleading Investors and Committing Accounting Violations* (Apr. 8, 2014), *available at* https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370541437806; Press Release No. 2014-4, *SEC Charges Diamond Foods and Two Former Executives Following Accounting Scheme to Boost Earnings Growth* (Jan. 9, 2014), *available at* https://www.sec.gov/News/PressRelease/Detail/PressRelease/1370540598296.

[13] Chair Mary Jo White, *Building a Dynamic Framework for Offering Reform*, Keynote Address at the Forty-Seventh Annual Securities Regulation Institute (Oct. 28, 2015), *available at* https://www.sec.gov/news/speech/building-dynamic-framework-for-offering-reform.html.

[14] *See Crowdfunding,* Release No. 33-9974 (Oct. 30, 2015*), available at* http://www.sec.gov/rules/final/2015/33-9974.pdf.

[15] The SEC recently approved the FINRA rules providing for funding portal requirements and oversight. *See Notice of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change, as modified by Amendment No. 1, to Adopt the Funding Portal Rules and Related Forms and Rule 4518,* Release No. 34-76970 (Jan. 22, 2016), *available at* https://www.sec.gov/rules/sro/finra/2016/34-76970.pdf. Although the portals cannot begin operating until May, they already are applying to register with the Commission and become members of FINRA.

[16] *See e.g.*, Press Release 2015-43, *SEC Halts Ponzi-Like Scheme by Purported Venture Capital Fund Manager in* Buffalo (Feb. 27, 2015), *available at* https://www.sec.gov/news/pressrelease/2015-43.html; Press Release 2014-92, *SEC Charges California-Based Stock Promoter With Defrauding Investors Seeking Pre-IPO Facebook and Twitter Shares* (Dec. 23, 2014), *available at* https://www.sec.gov/news/pressrelease/2014-292.html; Press Release 2013-44, *SEC Charges Financier with Stealing Investor Funds in Purported Offerings of Pre-IPO Facebook Shares* (Mar. 19, 2013), *available at* https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171513392; Litigation Release No. 22343, *SEC v. Allen E. Weintraub and AWMS Acquisition, Inc., d/b/a Sterling Global Holdings, Case No. 11-21549-CIV-Huck/Bandstra (S.D. Fl.)* (Apr. 24, 2012), *available at* https://www.sec.gov/litigation/litreleases/2012/lr22343.htm; Press Release 2012-43, *SEC Announces Charges from Investigation of Secondary market Trading of Private Company Shares* (Mar. 14, 2012), *available at* https://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171487740.

[17] *See* Susan Pullian and Telis Demos, *How Wall Street Middlemen Help Silicon Valley Employees Cash Out,* Wall Street Journal (Mar. 27, 2015), *available at* http://www.wsj.com/articles/how-wall-street-middlemen-help-silicon-valley-employees-cash-in-early-1427474284 *.*

[18] *See Equidate Launches A Secondary Market For Early Startup Employees To Sell Shares*, TechCrunch (Jan. 30, 2014), *available at* http://techcrunch.com/2014/01/30/equidate/ .

[19] Press Release 2016-57, *SEC Halts Fraud by Manager of Investments in Pre-IPO Companies* (Mar. 25, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-57.html.

[20] *See* Press Release 2015-123, *SEC Announces Enforcement Action for Illegal Offering of Security-Based Swaps* (Jun. 17, 2015), *available at* https://www.sec.gov/news/pressrelease/2015-123.html.

[21] By some estimates, Uber's valuation is worth more than 80% of the companies in the S&P 500. *See* Julie Verhage, *Uber is Now Valued Higher Than 80% of the Companies in the S&P 500,* Bloomberg (Dec. 3, 2015), *available at* http://www.bloomberg.com/news/articles/2015-12-03/uber-s-latest-funding-round-gives-it-a-larger-valuation-than-80-percent-of-the-s-p-500 . *See also* Telis Demos, *Tech Startups Face Fresh Pressure on Valuations*, Wall Street Journal (Jan. 3, 2016) (reporting that only seven tech startups valued at more than $1

billion privately went public in 2015, whereas by one count, there are more than 140 private startups valued at $1 billion or more), *available at* http://www.wsj.com/articles/tech-startups-face-fresh-pressure-on-valuations-1451817991 .

[22] Press Release 2016-32, *SEC Charges Biopesticide Company and Former Executive With Accounting Fraud* (Feb. 17, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-32.html.

[23] *See Fintech funding hits all-time high in 2015, despite pullback in Q4,* KPMG and CB Insights (March 9, 2016) (observing that venture capital-backed funding for fintech finance reached an all-time high in 2015), *available at* https://home.kpmg.com/xx/en/home/media/press-releases/2016/03/kpmg-and-cb-insights.html .

[24] *See* Overstock.com, Inc. Form S-3 Registration Statement, File No. 333-203607, effective on December 9, 2015, *available at* http://www.sec.gov/Archives/edgar/data/1130713/999999999515003225/xslEFFECTX01/primary_doc.xml.

[25] *See Transfer Agent Regulations*, Release No. 34-76743 (Dec. 22, 2015), *available at* https://www.sec.gov/rules/concept/2015/34-76743.pdf.

[26] *See* Department of Treasury, *Public Input on Expanding Access to Credit through Online Marketplace Lending*, 80 F.R. 42866 (Jul. 20, 2015), *available at* https://www.treasury.gov/connect/blog/Documents/RFI%20Online%20Marketplace%20Lending.pdf.

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