

## SEC Chair Clayton looks to quell critics in 2019

By [Joe Williams](#) | Published March 16, 2019 | [SEC](#) | [FOXBusiness](#)

Nearly two years into his tenure, [Securities and Exchange](#) Chairman Jay Clayton has not wavered from his goal of making the U.S. [capital markets](#) more accessible for [Main Street](#) investors. But 2019 may be Clayton's last chance to quiet critics who viewed his appointment with skepticism.

Over the past decade, investments have increasingly flowed to the private markets, initial public offerings have become too costly for many smaller businesses and human traders have been replaced by complex computer algorithms, all raising concerns that so-called “mom and pop” investors would opt out of participating.

While there are levers the agency can pull, it is limited in what it can do independently through rulemaking – which often takes months, if not years to finalize. Clayton is well aware of the challenges and is taking a far-reaching approach to try to solve what he views are the biggest impediments for retail investors.

In an exclusive interview in his penthouse office at the agency's headquarters, Clayton laid out his vision for the remaining time at the helm of the SEC and addressed complaints from critics.



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“Right now I have no plans on leaving and I have lots of plans for staying,” he said. “The biggest worry people 65 [and older] have is: am I going to run out of money? What I’m trying to do is make it so for the next generation, for as many people as possible, that’s not as big of worry.”

Clayton -- shoes off, feet perched on a glass coffee table with the U.S. Capitol looming in the background – has a surprisingly approachable nature for someone running the office tasked with the arcane mission of protecting the U.S. public markets.

The laid-back demeanor, however, hides a resume steeped in securities law and a prior roster of clients that reads like a “Who’s Who” of Wall Street giants. As a former attorney with elite law firm Sullivan & Cromwell, Clayton represented companies like Goldman Sachs, Morgan Stanley and Lehman Brothers – about as far from Main Street as you can get.

The background has given ample fodder for skeptics who questioned how strongly Clayton would police corporate America. For those who judge the SEC based on overall enforcement, their concerns may be justified. Total fines in 2017 dropped 7.2 percent to \$3.8 billion, the lowest number since 2013.

Current and former officials argue, however, that numbers alone don't paint the whole picture.

"Critics will be critics," former SEC enforcement attorney David Chase told Fox Business. "It's not about bringing the cases that bring in the largest dollars into the treasury. It's about really protecting the investing public and making sure the markets are fair, efficient and honest."

Clayton has also made an effort to balance punishments with the impact it could have on investors and focused enforcement on wrongdoing by brokers and investment advisors – traditionally a space overseen by the Financial Industry Regulatory Authority (FINRA) and the states – that can carry smaller penalties.

The philosophy goes back to his core mission of bolstering protections for Main Street investors, one that anyone who tracks the SEC is, by this point, well aware of. And with several initiatives in motion, this year could be critical in following through on that goal before the upcoming presidential election cycle when executive branch activity tends to slow.

“Clayton has lined-up a lot of the bowling pins over the course of the last couple years and he’s setting himself to knock all them down one-by-one over the next 15 months,” said Chris Iacovella, CEO of the American Securities Association.

One particular quandary for Clayton is the flood of capital flowing to private equity firms and other funds at the expense of the public markets – which are often much easier and cheaper for the average trader to participate in.

“Right now, for a Main Street investor to get involved in our private markets is really expensive and I continue to look for ways that we can get them access with the same kind of protection that they have in the public markets for substantially less money,” he said. “Even when investing in the private market is permitted under applicable law, the cost is almost prohibitive for ordinary people. And our private markets have [in some cases] outperformed our public markets.”

<b>Ticker</b>	<b>I:DJI</b>
<b>Security</b>	DOW JONES AVERAGES
<b>Last</b>	<b>25914.1</b>
<b>Change</b>	<b>+65.23</b>
<b>%Chg</b>	<b>+0.25%</b>
<b>Ticker</b>	<b>SP500</b>
<b>Security</b>	S&P 500
<b>Last</b>	<b>2832.94</b>
<b>Change</b>	<b>+10.46</b>
<b>%Chg</b>	<b>+0.37%</b>
<b>Ticker</b>	<b>I:COMP</b>
<b>Security</b>	NASDAQ COMPOSITE INDEX
<b>Last</b>	<b>7714.477933</b>
<b>Change</b>	<b>+25.95</b>
<b>%Chg</b>	<b>+0.34%</b>

The agency is advancing a slew of proposals to try to address Clayton’s concerns.

It announced earlier this month it will return more than \$126 million to shareholders – a “substantial majority” that will go to retail investors -- after settling charges with 79 investment

advisors. This follows a record \$1.07 billion returned in fiscal year 2017 and \$794 million in fiscal year 2018.

Last year, the SEC issued a series of draft rules intended to ensure broker-dealers are acting in the best interest of customers and provide greater transparency into the legal obligations of the investment advisors. Since then, Clayton has traveled to Atlanta, Houston, Denver and other cities to solicit feedback and final recommendations are pending.

After pressure from President Trump, the agency is looking into how it can reduce the burden on firms to produce quarterly earnings reports. The SEC is also trying to make it easier for some businesses to pursue an IPO by loosening the restrictions around when companies can talk to investors before launching that process and allowing firms to file paperwork confidentially.

And it is considering changes to the complicated shareholder proposal process -- including raising the amount of money that investors must hold before submitting recommendations that direct the board of directors to take a certain action -- and overhauling the rule that requires management to engage public auditors to review internal controls over financial reporting.

While at-times arcane, they are all moves that would ease regulatory constraints and actions corporate America has long pushed for.

Clayton's efforts to-date have earned high praise from former officials, the regulated industry and Congress, including top Democrats.

Still, the more sweeping actions, or lack thereof in some cases, has elicited strong criticism from some of the industry's largest players. The three major U.S. equity exchanges – the New York Stock Exchange, Nasdaq and Cboe Global Markets – recently sued the agency over a proposal to limit how much they can charge for stock trades and the rebates paid to brokers.

Supporters **heralded the pilot program** as a much-needed change to “a legalized kickback system between large exchanges and large retail-oriented broker-dealers at the expense of retail investors and market quality.”

The exchanges, however, argue it's an illegal government overreach. For Clayton, the pushback hasn't changed his mind.

“I don't think it's altered my view in any way,” he said. “There's enough question about whether it's appropriate that we should examine it, we shouldn't just blindly go forward with the same pricing structure that we set a decade ago.”

Spokespersons for the NYSE and Cboe did not respond to Fox Business' request for comment. A Nasdaq spokesperson directed inquiries to the Equity Markets Association, which said the

pilot would be "disruptive to our markets, harmful to investors and the exact opposite of what our capital markets need."

"We need to study this more diligently rather than arbitrarily selecting companies to participate," former Rep. Michael Ferguson, a senior advisor at law firm BakerHostetler, said in a statement.

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And while the **majority of Americans** are aware of bitcoin, the bulk hold Clayton's uneasy view of the digital currency – one that has earned him backlash from some conservatives.


"We're trying to steer a course here that's really good for the long-term Main Street investor, which doesn't mean not allowing innovation. Innovation is what fuels returns and it fuels a dynamic economy," he said.

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