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SEC Nominee White to Face Conflict Questions at Senate Hearing

By: Dave Michaels and Cheyenne Hopkins - March 12, 2013

Mary Jo White, U.S. President Barack Obama's choice to run the Securities and Exchange Commission, may be compelled to provide more information about her ties to large banks as senators press her today about how she would operate as Wall Street's regulator.

Some Democrats on the Senate Banking Committee who will question White at a nomination hearing say their concerns probably don't threaten her confirmation. White, 65, has said she would retire from New York-based Debevoise & Plimpton LLP, where she has served as a lawyer defending Wall Street, if she's confirmed by the Senate.

"She has to make it clear that she's going to be scrupulous about avoiding any potential conflict of interest that would affect her participation in rule-making," Senator Jack Reed, a Rhode Island Democrat, said in an interview. "I think she will do that."

White, who was the Manhattan-based U.S Attorney from 1993 to 2002, has had numerous meetings with senators in recent weeks as she faces skepticism about her ties to Wall Street. In her prepared Senate testimony, released yesterday, White doesn't address the issue. She previously pledged to abstain for one year from any SEC matter that involves Debevoise or its clients.

Senator Sherrod Brown, an Ohio Democrat, said last week he wasn't ready to support White for the post.

"I've got concerns about conflicts of interest," Brown said in an interview. "I have concerns about her ties to a law firm that have not been cut. I don't understand that."

Retirement Payments

White has said Debevoise would pay her a lump-sum retirement payment within 60 days of her starting at the SEC. The payment would replace her monthly retirement payments for four years. She is eligible for lifetime monthly payments from Debevoise of about \$42,500, according to her financial disclosure statement.

Other Democrats, including Senator Mark Warner of Virginia, said in interviews that they are inclined to support White. So far, she has impressed the banking panel's Democratic chairman, Senator Tim Johnson of South Dakota.

“She has a superb resume and Chairman Johnson was impressed with her in-depth knowledge of the issues and her commitment to taking a balanced approach at the SEC,” Sean Oblack, Johnson’s spokesman, said in an e-mail.

White’s testimony dwells on market regulation, a topic that hasn’t been a large part of her career as a litigator. She singled out high-frequency and algorithmic trading as strategies that demand further evaluation from the SEC.

Investor Impact

“There must be a sense of urgency to addressing these issues to understand their impact on investors and the quality of our markets so that the appropriate regulatory responses can be made,” White wrote.

White said her first priority would be completing rules required by the Dodd-Frank Act of 2010 and last year’s Jumpstart Our Business Startups Act. The SEC should consistently consider the economic costs and benefits of new rules “from the outset,” she wrote.

White said that many other pending regulations await her at the SEC, including a rule to place new restrictions on money-market mutual funds and one that would set a new standard for brokers’ conduct with customers.

White has spent much of her 38-year legal career at Debevoise, where she earned \$2.4 million last year. Her clients have included JPMorgan Chase & Co. (JPM), Morgan Stanley (MS), and UBS AG. She also represented former Bank of America Corp (BAC) Chief Executive Officer Kenneth D. Lewis during an SEC probe of bonuses paid to Merrill Lynch & Co.’s executives before Bank of America bought the brokerage.

Enforcement Questions

She could be pressed to explain how she’d oversee the SEC’s enforcement program, said Mark Calabria, director of financial regulation studies at the Cato Institute and a former Republican staff member of the Banking Committee. Her testimony follows recent warnings from Attorney General Eric Holder that the size of the largest financial institutions make it difficult to fully punish them for wrongdoing.

“Investors and all market participants need to know that the playing field of our markets is level and that all wrongdoers -- individual and institutions, of whatever position or size -- will be aggressively and successfully pursued by the SEC,” White wrote in her testimony.

Senate Republicans haven’t publicly expressed reservations about White’s nomination. Her history as an attorney for banks could make her more appealing to some Republican senators because it suggests she understands how regulations affect companies, according to Richard C. Breeden, a Republican and former SEC chairman from 1989 to 1993.

Both Sides

“They are going to be comforted by the perspective and balance,” Breeden said in a phone interview. “I wouldn’t limit it to Republicans, but business-friendly Democrats as well. She’s got that experience on both sides, which should help her make good decisions.”

Senator David Vitter, a Louisiana Republican, has said he intends to press White about how often she would have to remove herself from SEC matters that affect her past clients in the financial sector, Calabria said.

White may not be the main event the hearing. Senators will also question Richard Cordray, Obama's nominee to be director of the Consumer Financial Protection Bureau. Republicans want to restructure the bureau's leadership and gain oversight over its budget before voting on a permanent director.

"In a way this probably helps her because senators are going to be focused on him," said Joe Engelhard, senior vice president of Washington-based consultant Capital Alpha Partners and a former Treasury Department official. "The only complication I see on her confirmation is her representation of the large banks recently."