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# The Agency That Barely Moves

The SEC is paralyzed by politics and poor leadership, staffers say

David Michaels and Robert Schmidt

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As the Justice Department, Federal Reserve, and other regulators across the globe prepared the final details of a multibillion-dollar criminal settlement with five Wall Street banks over currency rate rigging, all eyes were on one agency that had the power to throw a wrench into the entire deal. Though a bit player in the negotiations, the politically divided Securities and Exchange Commission had to approve waivers each bank needed to continue to do normal business.

The pressure on SEC Chair Mary Jo White was almost palpable, two people involved in the negotiations say, as defense lawyers and prosecutors barraged her staff with inquiries and fellow commissioners weighed in with threats to vote against some of the waivers. Determined not to let the squabbling scuttle the broad settlement, White called a private commission meeting on May 19, when all the waivers were approved. The settlements were announced the next day.

It was a rare victory for White, whose two-year tenure heading the securities regulator has been marked largely by discord and paralysis rather than accomplishments.

Expectations were high for White, who came to the job with a reputation as a tough prosecutor. As U.S. Attorney for the Southern District of New York, she took on terrorists and mobsters. Later she became a highly sought-after defense attorney, representing banks and other defendants in government probes. In announcing her nomination in January 2013, President Obama warned the financial industry: “You don’t want to mess with Mary Jo.”

That reputation has been dented at the SEC. The pace of rulemaking has been so slow that some staff have labeled White’s office the cheese cellar: It’s where policy goes to age. The nickname has stuck as proposals and reports have piled up in her office, waiting for her careful, often line-by-line consideration. White’s circumspection has slowed the progress of high-profile rules governing executive pay, broker obligations, and swaps, the financial products that helped fuel the financial crisis.

White “has tackled incredibly complex issues over the past two years, working tirelessly to protect investors.”—*Treasury Secretary Jacob Lew*

White had never held a position for which she had to develop complex financial policy. That lack of experience, plus difficulty in developing a consensus on nettlesome issues, has contributed to the agency’s troubles, say critics inside and outside the agency. “You take a commission that faces the most challenging regulatory agenda since its creation and you appoint a nonpolicy person as chair,” says Barbara Roper, director of investor protection for the Consumer Federation of America. The SEC under White “has been as unproductive as I thought it would be.” White declined repeated requests to be interviewed for this story.

The agency’s problems, cited by more than a dozen former and current SEC officials who asked not to be identified discussing internal matters, are compounded by ideological divisions on the five-member commission that force White, a political independent, to try to cut deals with the two Democratic and two Republican commissioners who frequently clash on high-stakes decisions. “No chairman of the SEC in recent memory has ever had to contend with a more partisan, more polarized group of commissioners,” says former SEC Chairman Arthur Levitt. (Levitt is a director of Bloomberg LP, which owns *Bloomberg Businessweek*).

Levitt and other White supporters say she deserves credit for muscling through critical rules from the Dodd-Frank Act of 2010 in the face of such opposition. They include a ban on banks trading for their own profits and protections for investors who purchase mortgage bonds.

White also wins praise from SEC alumni for defending the agency’s turf and standing up to the Financial Stability Oversight Council, a group of federal regulators headed by Treasury Secretary Jacob Lew. When the group in 2013 and 2014 considered whether to give some of the SEC’s authority for overseeing the biggest mutual fund companies to the Federal Reserve, White resisted—and prevailed. White “has tackled incredibly complex issues over the past two years,” says Lew, “working tirelessly to protect investors.”

White has clashed with the Republican commissioners who tend to pursue an industry-friendly agenda, as well as the Democrats, who demand stricter rules and sanctions. In particular, White has repeatedly quarreled with Democrat Kara Stein, who has questioned whether the SEC pulls punches when punishing bank misconduct. In the past, Stein and White have dueled over waivers—such as the ones the SEC just granted—to allow banks to continue operating after settling regulatory investigations. White has told colleagues that Stein has distorted the importance of waivers and tied the commission in knots that slow progress on other issues. The relationship has soured so much that Stein banned White’s outgoing chief of staff, Lona Nallengara, from her office, people familiar with the situation say. “White hasn’t formed the necessary coalitions or reached grounds for compromise and accommodation with her other commissioners,” says Andrew Vollmer, a law professor at the University of Virginia, who worked as the SEC’s deputy general counsel from 2006 to 2009.

White may have an opportunity to change the dynamics. In May, Republican Commissioner Daniel Gallagher submitted his resignation, and the White House has begun scouting for a replacement for Democrat Luis Aguilar, a commissioner whose term expires in June. Although

White doesn’t have a say in picking a Republican to replace Gallagher, she has sought a more moderate replacement for Aguilar, say people familiar with her thinking. A Democrat who shares more of White’s views could dilute Stein’s influence.

Since White became chairman, the SEC has approved 15 rules, fewer than many of her recent predecessors during their first years atop the agency. Mary Schapiro oversaw 20 final rules from 2009 to early 2011. Christopher Cox pushed through 14 new regulations in 2006 and 2007, and William Donaldson finished 34 rules in 2004 and 2005. Comparing White’s progress with other chairmen is difficult because the rules she must write under Dodd-Frank are more complex than other chairmen faced, say people close to White.

White has said to colleagues that she wants to move faster and recently told commissioners to expect a busier pace in the next several months, say people familiar with the matter. She kept that promise in April and May, when the SEC voted to advance four new rules. She continues to push an ambitious agenda packed with dozens of rules required by Dodd-Frank and other projects she conceived: an overhaul of corporate disclosure requirements, new rules for asset management firms, and a wholesale review of the way stock exchanges work.

White’s reputation as a tough enforcer has also taken a hit. Although the agency has touted its cases against Standard & Poor’s and BlackRock, critics say that what White has called her “broken windows” strategy of going after all infractions, no matter how small, has led to many minor cases, such as one against corporate executives who failed to report stock sales within the required two business days. “White has arguably been less aggressive than I think many people would have expected,” says Mark Calabria, director of financial regulation studies at the Cato Institute. “People thought there would be a legacy of high-profile, high-dollar enforcement actions, but I think that surprisingly has not been the case.”