

InvestmentNews

New SEC chief kicks agency into high gear

Advancing on money market reform with unanimous commission gets praise

By Mark Schoeff Jr. – July 21, 2013

In her first 100 days in office, SEC Chairman Mary Jo White has drawn both praise and criticism, but almost everybody agrees that she has jump-started an agency that had become prone to stalling.

Just last month, the Securities and Exchange Commission proposed money market mutual fund reforms that had been discussed for more than two years and had languished since last summer.

Two weeks ago, the agency lifted an 80-year-old ban on advertising private securities offerings, implementing a key provision of a bill that Congress passed with overwhelming bipartisan support more than a year ago.

Each of the rules had tied the agency in knots when Mary Schapiro was chairman. When Ms. White, a former U.S. attorney for the Southern District of New York, was sworn in on April 10 to replace Ms. Schapiro's short-term successor, Elisse Walter, the pace quickened.

“She's getting important things done that had proved impossible for her predecessor,” said Richard Breeden, chairman of Breeden Capital Management LLC and SEC chairman from 1989 to 1993. “That's not a criticism of Mary Schapiro. That's just a fact.”

John Walsh, a partner at Sutherland Asbill & Brennan LLP and a 23-year SEC veteran, made a similar assessment.

“She's showing herself to be very sure-footed and able to navigate different currents here in Washington,” Mr. Walsh said. “That she's making things happen is pretty impressive.”

Mr. Breeden praised Ms. White's ability to “cut the Gordian knot” on money market mutual fund reform, which collapsed after three of the five commission members blocked a proposal last August. In June, the commission voted 5-0 to propose a new set of reforms, some of which were similar to the ones proposed by Ms. Schapiro.

'Unanimous Commission'

“In her first 100 days, she has produced a unanimous commission on arguably the most important rule making before the commission,” Mr. Breeden said of Ms. White. “That's an extraordinary accomplishment.”

Daniel Gallagher, one of the commissioners who opposed the first money fund proposal, credits Ms. White for setting a collegial tone and frequently talking to her fellow commissioners.

“It's a whole new world, where we're having regular and iterative communication,” Mr. Gallagher said. “She's very engaging. I do think that is really going to help.”

Luis A. Aguilar, another commissioner who opposed the previous money fund proposal, also endorsed the efforts of Ms. White and Ms. Walter.

“The process leading to today's proposal has been a refreshing and inclusive process, and stands in direct contrast to the previous process,” he said at a June 5 agency meeting.

Like money fund reform, the private-placement advertising rule was under way and generating controversy long before Ms. White took over.

In her Capitol Hill appearances, Republicans urged Ms. White to push through the rule lifting the advertising ban. They were incensed at what they viewed as the SEC's delaying tactics on the regulation under Ms. Schapiro.

Her quick follow-through pleased lawmakers but has drawn the ire of investor-protection advocates, who maintain that the advertising rule lacks sufficient investor safeguards. They are skeptical that a separate package of reforms to the private-placement process that Ms. White offered will be approved by the commission.

“She had an opportunity to come in and be the hero,” said Barbara Roper, director of investor protection at the Consumer Federation of America. “She chose to adopt the path of giving the industry everything it wanted upfront and deferring to some possible rule making any protection for investors.”

Rather than creating a can-do atmosphere, Ms. White has raised questions about the SEC's identity as a defender of investors, according to Ms. Roper.

“The message it sends is that the top priority is getting the House Republicans off their backs, getting industry off their backs and moving rules through the process without any concern for their impact on investors,” Ms. Roper said.

However, that assessment might be harsh, given Ms. White's initiative on another thorny issue about which investor advocates have been vocal.

As U.S. attorney, Ms. White put mobsters and terrorists in jail. But she also had plenty of experience defending the financial industry as head of the litigation department of Debevoise Plimpton LLP. That raised speculation that Ms. White might go soft on big banks when bringing civil enforcement actions.

But she already is pursuing a major change in enforcement policy that could have a long-lasting effect on the agency. She has proposed that in some actions, the SEC not allow its targets of civil litigation to avoid admitting guilt when settling cases.

It's a clever initiative befitting a former prosecutor, according to Lee Unterman, managing partner at Montgomery McCracken Walker & Rhoads LLP. At the very least, it is one more weapon in the SEC's arsenal.

“She is going to try to force earlier settlements by holding that sword over the defense's head,” Mr. Unterman said. “From the defense side, it's amorphous and problematic. It's an advantage for her side.”

Listens to critics

The move demonstrates that Ms. White has taken to heart the criticisms of the SEC's “no-admit, no-deny policy” from judges, advocates and policy experts, according to Mark Calabria, director of financial services regulation at the Cato Institute, a Washington think tank.

“If she can shift that philosophy of enforcement, then I think we can get back to making reputation a real force in capital markets,” he said.

In her first few months on the job, Ms. White also has focused on investment-adviser issues.

She is seeking congressional approval for a substantial SEC budget increase in part to hire 250 more investment adviser examiners. Each year, the agency examines only about 8% of the approximately 10,000 registered advisers. Forty percent have never been examined.

Ms. White has not indicated whether she favors establishing a self-regulatory organization to oversee advisers. But SRO opponents are reading into Ms. White's budget advocacy a desire to keep the function under the SEC's roof.

“She has to believe that the SEC is doing a credible job — if not a good job — and that it needs more resources to deal with that issue,” said David Tittsworth, executive director of the Investment Adviser Association.

Ms. White is running into the same funding difficulties Ms. Schapiro faced in Congress. A bill approved by the House Appropriations Committee gives the SEC only a \$50 million budget increase — to \$1.37 billion — instead of the more than \$350 million boost it says it needs.

“It's a slap in the face in the first 100 days,” said Stephen Crimmins, a partner at K&L Gates LLP and former SEC deputy chief litigation counsel. It's as if legislators were saying, “Here are the handcuffs so that you can't do your job.”

Fiduciary standard

One area where investment advisers see a lack of momentum from Ms. White is the fiduciary standard. The SEC has failed to raise standards for brokers, despite being given the authority to do so by the Dodd-Frank financial reform law. The SEC is conducting a cost-benefit analysis of a potential rule that may take many months.

“She's moving on some issues, she's just not moving quickly enough on issues near and dear to us,” said Diahann Lassus, president of Lassus Wherley & Associates PC. “I do hope Chairman

White is taking a little time to get her feet on the ground and once she does, she'll [proceed with] the fiduciary standard.”

If the agency is going to move forward on fiduciary duty and other issues, Ms. White has to get the backing of her colleagues, whose opinions can diverge at any moment.

Mr. Gallagher and fellow GOP commissioner, Troy Paredes, voted against the private-placement reform proposal offered with the advertising rule, claiming it will hamstring those trying to raise capital.

“I don't view that as dispositive that things will always be 3-2, but I am disappointed in the proposal,” Mr. Gallagher said.

Observers agree that it will take more time to get to know Ms. White.

“In all likelihood, her second 100 days will be more eventful than her first,” Mr. Calabria said.