

## SEC nominee to be tested on JOBS Act

By: Mark Schoeff Jr. - February 3, 2013

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If confirmed by the Senate as SEC chairman, Mary Jo White would be the first prosecutor to fill that role.

However, her initial test at the Securities and Exchange Commission likely would be implementing controversial elements of a new law making it easier for companies to raise money from investors.

The Jumpstart Our Business Startups Act, which gained bipartisan congressional approval and was signed into law by President Barack Obama last April, includes a provision that allows investment firms to advertise private offerings (under Regulation D) to the public, and another that OKs crowd funding, or the sale of stock in emerging companies over the Internet.

The SEC has missed deadlines for finalizing rules for both parts of the law and is under pressure from lawmakers, who argue that the provisions are aimed at helping entrepreneurs obtain capital and create jobs.

Critics have urged the SEC to proceed more cautiously, to avoid harming investors inadvertently.

If Ms. White's confirmation process goes relatively smoothly and concludes in a matter of several weeks, she likely will arrive at the SEC's Capitol Hill headquarters just in time to walk into the crossfire.

"I expect her to participate in [JOBS Act] rule making," said Mark Calabria, director of financial services regulation studies at the Cato Institute. "It will be one of the more controversial things she steps into."

The current SEC chairman, Elisse Walter, is running a four-member commission that is split between two Democrats and two Republicans. The Republicans, Daniel Gallagher and Troy Paredes, support the proposed rule on Regulation D advertising, while Democrat Luis Aguilar opposes it, and Ms. Walter has expressed reservations.

A split vote sends the proposal back to the drawing board, but when Ms. White arrives, she could suddenly find herself the swing vote. She will be closely watched.

"The route of least resistance is to side with the two Republicans and push through weak rules that do not protect in-vestors," said Barbara Roper, director of investor protection at the Consumer Federation of America. "It would immediately identify her as an anti-investor SEC chairman."

Late last week, Ms. Walter did not offer a timetable to finalize the Reg D advertising rule or to propose a crowd-funding rule.

The proposal to allow private- placement offerings to be advertised, released in August, has drawn more than 200 comments.

In remarks at a Jan. 18 meeting of the SEC Investor Advisory Committee, Ms. Walter said that implementing the JOBS Act is a priority.

Ms. Walter thanked the 21-member advisory panel for its unanimous recommendations to tighten accredited investor verification procedures and make other changes to the Reg D advertising rule, but she also said that the SEC won't thwart congressional intent.

“Once a statute is passed, we will carry it out,” she said. “It is not our job to undo congressional determinations.”

The SEC hasn't indicated whether it will vote on the proposed rule as it stands or amend it to incorporate some of the suggestions on investor protection that it has received during the comment period.

“Capital formation and investor protection need to be compatible prongs of our mission,” Ms. Walter said Friday at a meeting of the SEC Advisory Committee on Small and Emerging Companies.

If Ms. White is confirmed relatively quickly, Ms. Walter is unlikely to make any moves before her arrival. On the other hand, if Ms. White's confirmation drags out for months, Ms. Walter would have time to act on the advertising rule.

In November, some GOP House members urged outgoing SEC Chairman Mary Schapiro to finalize the proposed rule before she departed Dec. 14. Now it looks as if Capitol Hill Republicans — and Democrats — are willing to wait for Ms. White's confirmation.

“I congratulate Mary Jo White on her nomination and will be particularly interested to learn during her confirmation hearings how quickly she plans to finish the SEC's delayed work on the bipartisan JOBS Act that Congress passed almost a year ago,” House Financial Services Committee Chairman Jeb Hensarling, R-Texas, said in a statement. “The JOBS Act is key to creating a healthier economy, yet the SEC appears to be slow-walking its implementation.”

The Senate Banking Committee hasn't yet scheduled a confirmation hearing for Ms. White. A Senate Democrat who will participate in that session plans to ask her about the tardy rules.

“I am interested in hearing about Ms. White's plans to prioritize implementation of the JOBS Act that Congress passed last March,” Sen. Jon Tester, D-Mont., said in a statement.

One financial adviser isn't as patient as lawmakers seem to be.

C. Shane Buckner, founder of North State Capital Partners LLC, wants the SEC to finalize the advertising rule now.

“The fact that a regulatory agency can block bipartisan legislation is appalling,” he said.

But what looks like obstruction to one observer can look like the SEC performing its investor protection duties to another. Sorting out those distinctions will be one of the challenges that Ms. White faces as she addresses regulatory policy for the first time.

Charles Lundelius Jr., a director at Berkeley Research Group, said that, like other SEC chairmen, she will rely on her staff to help her navigate regulations.

“She doesn't need to be that far down in the weeds,” he said.

In Ms. White's case, she hasn't even set foot in the regulatory garden.

“It's an interesting choice by the administration to nominate someone with no regulatory experience when the regulatory issues facing the commission have never been tougher,” Ms. Roper said. “It argues for the selection of a third Democratic commissioner who really knows these issues.”