



## SENATE BANKING COMMITTEE HEARING

### OVERVIEW

For questions please contact [Kwon Park](#) at (202) 547-3035.

Today, the Senate Banking Committee met in open session to conduct a hearing entitled “Oversight of the U.S. Securities and Exchange Commission.”

### Key Takeaways

- Chair White said that the SEC plans to complete certain parts of the Dodd-Frank Title VII derivatives reforms by the end of this year.
- The full Equity Market Structure Advisory Committee (EMSAC) has received a maker taker pilot program recommendation from its Subcommittee, and the Commission hopes to decide on next steps by the end of this year.
- Also, Chair White indicated that the SEC expects to propose a rule to provide greater transparency on order routing and on existing disclosures to retail investors by the end of the year.
- Senators Moran (R-KS) and Cotton (R-AR) asked Chair White about the SEC’s oversight over FINRA. White stated that FINRA is primarily responsible for surveillance and the regulation of broker-dealers (BDs) and operates under a board structure. She said that while the SEC does oversee FINRA, the agency does not have the power to appoint or remove its board members.

### SUMMARY

#### Opening Statement and Testimony

##### [Chairman Richard Shelby \(R-AL\)](#)

- Excessive and unnecessary regulation may endanger America’s status as the world financial center. The SEC should focus on its core mission and avoid pressures from special interests to pursue unnecessary rulemakings (i.e disclosure on climate change and political contributions).
- The SEC should review the appropriateness of its existing rules and equity market structure and continue to take seriously the importance of strong economic analysis when promulgating rules.
- Concerned that attempts by other federal agencies to erode the SEC’s jurisdiction could undermine the integrity and functioning of these markets. Recent examples include the Department of Labor’s (DOL) fiduciary duty rule, the FSOC’s continued focus on asset managers, and the Federal Reserve’s (Fed) targeting of BDs under the guise of reining in what it calls ‘shadow banking.’

##### [Ranking Member Sherrod Brown \(D-OH\)](#)

- The SEC must complete Dodd-Frank Title VII derivatives reforms.
- Another Wall Street reform rule that remains outstanding would prohibit incentive compensation that could lead to excessive risk taking or significant losses at financial firms. The multi-agency rule was proposed in 2011 and only re-proposed last month. A final rule would provide the market and

the public with some assurance that senior executives at financial institutions will not be rewarded for taking inappropriate risks that could harm the markets, their employees, or the economy.

- As the cop on the beat, at what point is the SEC going to stop handing out warnings and start giving tickets? This is evident in the “bad actor” waiver process. Granting these waivers eliminates the significant consequences that could promote better overall compliance at those institutions.
- Democrats in the Senate have repeatedly asked the SEC to begin work on a corporate political spending disclosure rule. I realize this year’s Appropriations Bill limits the SEC’s work on that rule, but it should not prevent the agency from doing anything at all.

### SEC Chair Mary Jo White

- The SEC has advanced major rulemakings on key equity market structure issues such as greater transparency of ATSS and the consolidated audit trail (CAT).
- The agency has completed 66 mandatory rulemakings, and completing Title VII derivatives reforms, the JOBS Act, and the FAST Act are major priorities for 2016.
- Current SEC resources are insufficient to carry out its increased regulatory mandates and its mission.

### **Discussion**

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#### **FINRA**

*Moran (R-KS):* Given FINRA's increased role in the regulatory structure and its lack of accountability to Congress, can you provide some insight into the SEC's oversight of FINRA? *White:* The SEC has enhanced oversight of FINRA and will continue monitor its activities.

*Cotton (R-AR):* How does FINRA operate? What input do FINRA members have on its policy agenda? *White:* FINRA is primarily responsible for the surveillance and regulation of BDs with similar tools of an independent regulatory agency. FINRA has a board and membership structure. The SEC oversees FINRA and has some authority over approval of its rules but does not have the power to appoint or remove its board members.

#### **Title VII Derivatives Rulemaking**

*Brown:* Why has the SEC not completed its Title VII rulemakings? *White:* The SEC has significant responsibilities (i.e. JOBS Act, Dodd-Frank mandates, core missions) and has undergone historical levels of regulatory activity with great complexity in recent years. Title VII remains a high priority and we hope to complete the certain rules by the end of this year.

#### **Equity Market Structure**

*Crapo (R-ID):* What are the top market structure issues? *White:* EMSAC has received a recommendation on a maker taker pilot program from its Subcommittee and the Commission hopes to decide on next steps by the end of this year. Also, we expect to propose a rule this year to provide greater transparency on order routing and on existing disclosures to retail investors.

*Moran (R-KS):* Should the NMS plan's governance model be reformed to reflect market evolution and to include additional voting members? *White:* The EMSAC Subcommittee will provide a recommendation on this subject soon.

*Warner (D-VA):* How will you address conflicts of interest between brokers and clients regarding exchange rebates? *White:* We will proceed with a well-designed pilot and expect a recommendation in

the July 8 telephone meeting with EMSAC. SEC staff and the Commission will decide what the parameters will be. Staff is also working on an anti-disruptive trading rule.

## **FSOC**

*Shelby:* Will you consider a public comment period on future studies issued by FSOC? *White:* Yes.

*Crapo (R-ID):* Does FSOC need to provide actionable guidance as to an off-ramp process for SIFI designation? *White:* The off-ramp process currently exists, but I understand the need for increased transparency.

## **Dodd-Frank**

*Brown:* Concerned by efforts to repeal Dodd-Frank? *White:* Yes, as these reforms have enormously strengthened our financial system.

*Merkley (D-OR):* Why is there no rule on Dodd-Frank Section 619 regarding securitizations and conflicts of interest? *White:* The rule is more complicated than SEC experts envisioned. Staff is working hard to complete a re-proposal.

## **Enforcement and Waivers**

*Shelby:* When is it appropriate for the SEC to exercise its ability to deregister entity? *White:* We will look to deregister firms if it is in the interest of our markets.

*Brown:* How can the public better understand the process of whether a waiver is granted or not granted? *White:* Staff tracks waivers that are not granted, and granted waivers are publicized on the SEC website. We will consider enhancements to transparency if they are warranted.

## **SEC**

*Shelby:* If the Chair is recused from an issue, who becomes accountable on the staff's use of delegated authority? Once the Commission votes to delegate authority to staff, how can new Commissioners take back that authority? *White:* The Commission may delegate many day-to-day functions under the statute, but as a safeguard, the Commission can review any staff action. Staff may refer certain issues to the Commission if it chooses to. To review a delegated authority, the Chair must put it in the agenda, and other Commissioners may ask the Chair to do so.

*Donnelly (D-IN):* What do you think about the safe harbor provision (market manipulation liability) on certain stock buybacks? *White:* The safe harbor rule does not immunize liability of market manipulation if manipulation does occur. If the buyback is done on the basis of material non-public information, a fraud action may be brought. What we expect from the corporations we regulate is fairness, not only to the shareholders, but also to their employees.

*Tester (D-NY):* Do you have adequate resources, and if not, would it change if the SEC is self-funded? Would you get more work completed with additional staff and all five Commissioners? *White:* The SEC is significantly underfunded. Self-funding would help provide more resources than currently appropriated by Congress. A full Commission would allow more work to be completed.

## **Corporate Disclosure**

*Merkley (D-OR), Menendez (D-NJ), and Schumer (D-NY):* Why is the corporate political disclosure rule not on the Regulatory Flexibility Agenda? Will you at least prepare for rulemaking? *White:* The Regulatory Flexibility Agenda reflects what we think the Commission can complete in the next 12 months.

*Brown and Schumer (D-NY):* Update on the petition to propose a rule on enhanced disclosure of diversity on corporate boards? *White:* The Division of Corporate Finance is deciding whether to propose a recommendation to the Commission, which we expect to receive soon.

*Warren:* Do you really believe that investors are receiving too much information? *White:* The concerns expressed relates to whether too much information clouds meaningful judgment, and also, the manner in which the information is being provided.

### **DOL Fiduciary Rulemaking**

*Rounds (R-SD):* How can the SEC structure a uniform fiduciary duty rule with DOL when there are fundamental disagreements? *White:* I believe there should be a uniform fiduciary duty rule when BDs provide investment advice to retail investors.

*Brown and Tester (D-MT):* Any plans to complete the fiduciary duty rule? *White:* This rulemaking is not a statutory mandate, but I believe there should be a uniform fiduciary duty rule.

### **JOBS Act**

*Rounds (R-SD):* Concerned about the fact that private offerings have outstripped public stocks sold to retail investors? *White:* The Commission is obligated to monitor both private and public markets closely, and the accredited investor definition plays a big role in policy decisions. We are looking at our rules to determine what is driving people away from public offerings. While the JOBS Act makes it easier to offer public offerings, we are very focused on investor protection issues.

### **Puerto Rico**

*Menendez (D-NJ):* What steps has the SEC taken regarding the Puerto Rican bond crisis? *White:* The SEC has closely attended to investments in various funds that may be at risk of investment protections. The Division of Investment Management issued guidance, and two enforcement actions against BDs have taken place. We are very focused on Puerto Rico, but cannot comment specifically on ongoing actions.

### **Business Development Companies (BDCs)**

*Toomey (R-PA):* If my proposed legislation is adopted, BDCs will be better able to provide loans to small and medium-sized companies. What are your concerns on the leverage component of this rule? *White:* BDCs have been good growth vehicles, but the leverage provision allows the potential upsides and downsides to be multiplied.

### **Office of Small Business**

*Heitkamp (D-ND):* Do you support legislation to create the Office of Small Business inside the Commission? *White:* We currently have the Office of Small Business Policy within the Division of Corporate Finance. I am an advocate for small business.