



HOUSE FINANCIAL SERVICES COMMITTEE HEARING

OVERVIEW

For questions on the note below, please contact [Kwon Park](#) at (202) 547-3035.

Today, the House Financial Services Committee held a [hearing](#) entitled “Examining the SEC’s Agenda, Operations, and FY 2018 Budget Request.”

Key Takeaways

- Chair White stated that while there is no last minute rush to complete any rules during her remaining tenure, the Commission would carry out its 2016 agenda. Her year-end goals include: capital, margin and segregation rules under Title VII of Dodd-Frank; the use of derivatives in the asset management space; and electronic reporting of mutual fund reports.
- On U.S. treasury markets, White said that staff is working on guidance to draw the line between dealers and traders to determine whether high-frequency traders and proprietary trading firms participating in treasury markets should be registered as dealers subject to SEC oversight.
- With regard to equity market structure, Chair White indicated that any changes to Reg NMS will likely be a decision for the next administration.
- White said the SEC’s fintech working group will make targeted recommendations (i.e. guidance, concept release, rule proposal) to the Commission on next steps to appropriately foster innovation while protecting investors. She revealed that the Division of Corporation Finance is currently reviewing companies issuing digitized securities.

SUMMARY

Opening Statements and Testimony

[Chairman Jeb Hensarling \(R-TX\)](#)

- The SEC has failed to develop a capital formation agenda, has done little to promote capital formation since Congress passed the JOBS Act in 2012, and has not acted on recommendations made by its Small Business Capital Formation Forum.
- Also languishing at the SEC is the directive passed by Congress requiring the agency to simplify its disclosure regime. The FAST Act, which became law last year, requires the SEC to eliminate or reduce burdensome, duplicative, or outdated disclosures.
- While Chair White is under enormous pressure from those who are intent on politicizing the SEC’s disclosure regime, she has an obligation to follow the law and not appease extremists whose ideological objectives have nothing to do with the SEC’s mission. The SEC’s failure to require the electronic delivery of mutual fund documents is also disappointing.
- Further, claims that the agency is underfunded are not supported by the facts since the budget has increased 325% since 2000.

- Most importantly, “midnight rulemaking” is neither conducive to sound policy nor consistent with principles of democratic accountability. With two Commissioner vacancies, absent an emergency, Chair White should resist the temptation to finalize any regulations, including Dodd-Frank Title VII.

Ranking Member Maxine Waters (D-CA)

- I am appalled that the reaction on Wall Street to the election is record highs for bank stocks as the industry rallies on the news of a massive, destabilizing lawless agenda.
- President-elect Trump does not have a coherent or consistent stance on anything, and we cannot rely on anything he says. While Mr. Trump says he is not beholden to Wall Street and other special interests, it he is rumored with appointing he will appoint Wall Street insiders and their friends in Congress to run his administration.
- The SEC has been the victim of woefully inadequate budgets as a result of Republican obstructionism for years, despite the crucial role that the agency plays in policing our ever-expanding financial markets.

Scott Garrett (R-NJ)

- The SEC still has not developed a capital formation agenda, and has not changed or modernized its regulations to reduce burdens on smaller and medium sized enterprises – despite its budget growing without any details on its missions.

Chair Mary Jo White, Chair, Securities and Exchange Commission (SEC)

- In FY 2015, the SEC brought over 850 enforcement actions and performed 2,400 examinations – a 7-year high, reflecting a smarter and more effective enforcement and examination program.
- The Commission, with only three Commissioners, has passed and advanced a consequential set of rules to improve market structure, transparency, order handling issues, and more.
- Further, the agency has adopted about 80% of mandatory rulemakings required by Dodd-Frank, most of the JOBS Act, and the FAST Act.
- The Commission faces significant resource challenges in order to adequately address the growing and complicated securities markets. Current resources are insufficient and further cuts will imperil progress made and diminish efforts to fulfill our mission.

Discussion

Pending Rulemakings

Luetkemeyer (R-MO) and Duffy (R-WI): Are there any midnight rulemakings to watch out for? What rules do you want finalized in the next two months? *White:* Our 2016 agenda was set in February at SEC Speaks. There is no last minute rush to complete any rules, but we will carry out the 2016 agenda until my departure. Other than the consolidated audit trail (CAT) being proposed today, year-end goals include: capital, margin, and segregation rules under Title VII,; the use of derivatives in the asset management space; and electronic reporting of mutual fund reports (Rule 30e-3).

Huizenga (R-MI): Will you commit to not moving forward on any rules until your departure? *White:* We will carry out Congressional mandates as consistent with our mission. However, I am cognizant that rulemaking does not benefit from being rushed.

Rule 15b9-1 FINRA Registration

Hultgren (R-IL): Is the agency properly analyzing the rule's impact on options markets, and what is the rule's status? *White:* Staff is reviewing comments and studying impacts on options markets. The rule will not be imminently adopted.

Market Liquidity

Hensarling (R-TX) and Barr (R-KY): Are regulations like the Volcker Rule and Basel capital and liquidity requirements contributing to the decreasing liquidity in fixed-income markets (specifically, corporate bond markets)? Has the SEC conducted any analysis of systemic risk that results from a lack of liquidity in corporate bond markets? *White:* No, but we continue to study liquidity in bond markets. FSOC and SEC economists are studying illiquidity, but there are no definitive answers. Under the Volcker Rule, banks have the market maker exemption available to provide market liquidity.

Moore (D-WI): Has the SEC studied the negative impacts from its Floating NAV rule on state and local governments? *White:* We continue to study the rule's impacts.

Royce (R-CA): What is the cumulative impact of regulations on economic growth and lending? *White:* Capital markets are built on taking prudent risks with relevant factors disclosed. SEC economists are studying the cumulative impact of regulations on capital formation and corporate bond liquidity.

Equity Market Structure and the Equity Market Structure Advisory Committee (EMSAC)

Garrett (R-NJ): Will EMSAC be renewed, and will the membership change to include other market participants? *White:* The Committee charter expires on February 28, 2017, so the Commission will discuss renewing the charter. The new membership composition will likely include members from a retail brokerage firm and a stock exchange.

Lynch (D-MA): Any changes to market structure coming soon? *White:* We are responding to your recommendation to introduce a comprehensive tick size pilot, and to bring more transparency into order routing. Staff is working on a recommendation for the Commission to determine next steps on the pilot program, and what the precise components will be. Unsure whether anything will come during the remainder of my tenure.

Garrett (R-NJ): Will the SEC continue to examine rule impacts on equity markets and the behavior of individual market participants? *White:* Yes. As part of the equity market structure review there are areas we can act on quickly, and other areas that are part of a longer comprehensive review (i.e. Reg NMS).

Duffy (R-WI): Will the SEC ensure that data from pilot programs will not expose a firm's trading strategies? *White:* Data security is a high priority.

Pittenger (R-NC): What are the most significant issues to smaller market participants participating in equity markets? *White:* Availability of secondary liquidity, and regulations that unnecessarily inhibit smaller companies from going public.

Hultgren (R-IL): What steps are in place to ensure EMSAC recommendations are considered? *White:* At the end of the day, the SEC decides whether to adopt the recommendation, but Committee input is important in order to maintain the best capital markets in the world.

Hill (R-AR): When will the Commission review or act on Reg NMS recommendations? Should exchanges remain as self-regulatory organizations (SROs)? *White:* On Reg NMS, the Commission is taking a data-driven approach to complete a comprehensive study of all the issues. The timing on moving forward is uncertain, and will likely be up to the next administration. No view on whether exchange should remain as SROs.

Scott (D-GA): What is the status of equivalency moving forward, and how has Brexit impacted this issue? *White:* The SEC's cross-border guidance is based on a substituted compliance regime. Staff is involved in ongoing discussions, and the U.K. is still sorting out its own issues.

U.S. Treasury Markets

Maloney (D-NY): Why are high-frequency traders and proprietary trading firms not registered as dealers, subject to regulatory oversight? *White:* Staff is working on public guidance to draw the line between dealers and traders. The SEC, CFTC, and prudential regulators are coordinating to bring greater transparency and protections to treasury and equity markets.

Fintech, Online Lending, and Cybersecurity

Neugebauer (R-TX) and Hultgren (R-IL): Should the industry participate in the SEC's fintech working group, and should the SEC be the primary regulator to non-depository institutions? *White:* The SEC's fintech working group will make targeted recommendations to the Commission on next steps to appropriately foster innovation while protecting investors. The Division of Corporation Finance is reviewing companies issuing digitized securities. The Commission will receive recommendations in the next few months to decide whether to issue interpretive guidance, a concept release, or rulemaking to address certain issues. The SEC should take a primary role in regulating non-depository institutions that engage in SEC regulated activities.

Velazquez (D-NY): Any final thoughts on the rapidly growing fintech industry and the role the SEC should play? *White:* The SEC will play a major role in the fintech space that is subject to our jurisdiction.

Tipton (R-CO): Are you worried about OCC Comptroller Curry's one-size-fits-all approach to regulating fintech? *White:* The SEC will work toward tailoring specific regulations to address specific problems.

Luetkemeyer (R-MO): Are you aware of increasing defaults by investors using online lending platforms, and is the SEC investigating? *White:* We are aware of reports and will continue to study this space.

Volcker Rule

Hensarling (R-TX): What are the five regulatory agencies doing to coordinate efforts on the Volcker Rule? *White:* Volcker Rule working groups meet to discuss ways to achieve consistency in implementation and enforcement.

Velazquez (D-NY): What happens if the Volcker Rule is eliminated? *White:* Dodd-Frank reforms are important to strengthening the financial system – would not want to see any amendments or repeals.

Capital Formation

Himes (D-CT): Status update on the IPO pricing study that was requested from FINRA and the SEC?

White: The study will be delivered soon. The data and cost information are complex due to the interaction between JOBS Act changes and other factors.

Velazquez (D-NY): Any areas the SEC should look at to streamline small business capital formation?

White: Under the JOBS Act, we expanded Reg A+, and proposed the definition of a small reporting company. The agency is engaging in a disclosure effectiveness review, and recently adopted amendments to interstate offering rules to make it easier for smaller businesses to pursue intrastate offerings.

FSOC

Rothfus (R-PA): FSOC is applying an activities-based approach to evaluating risk in the asset management industry – why not apply this method in the insurance industry? *White:* FSOC has the option to pursue either method.

Tipton (R-CO): Do you support FSOC's attempt to usurp the SEC's authority to regulate capital markets?

White: No.

FAST Act and Corporate Disclosures

Garrett (R-NJ): The FAST Act mandates the SEC to issue a report to Congress on modernizing disclosure rules – status? *White:* The report is due on November 28, and the Commissioners are now reviewing that report. I believe the Commission will meet that deadline.

Maloney (D-NY): What actions are underway to require the disclosure of diversity on corporate boards?

White: Staff is studying the issue and preparing a recommendation for the Commission – a proposal is unlikely during my remaining tenure.

Credit Rating Agencies (CRAs)

Luetkemeyer (R-MO): Is the lack of competition between CRAs potentially harmful to investors? *White:* We continue to focus on CRA reforms. Competition is a major issue, but an optimal solution has been difficult to propose.

Wells Fargo

Scott (D-GA) and Cleaver (D-MO): Is the SEC investigating Wells Fargo? What prompted the SEC's investigation into Wells Fargo two years ago? *White:* I cannot comment on enforcement actions. Two years ago, the Division of Corporation Finance was simply reviewing annual filings.

Green (D-TX): If a bank creates a false sense of growth by engaging in tactics to appear it has more customers – is that conduct under the SEC’s jurisdiction? Do CFPB responsibilities conflict with the SEC?
White: The SEC does oversee misleading disclosures by public companies. Should conflicts exist, we resolve them.

Other Issues

Duffy (R-WI): Should the proxy submission rules be updated? *White:* Staff is reviewing its previous recommendations on this issue; however, this change will not come during my remaining tenure.

Pittenger (R-NC): See any problems with the sale of Chicago Stock Exchange to a Chinese firm? *White:* I do not want to prejudge the transaction.

Cleaver (D-MO): Was the executive compensation rule not voted on because a Republican Commissioner refused to vote and rejected the quorum? *White:* No, every rule we decided to vote on had a quorum.

Wagner (R-MO): Does the Department of Labor’s fiduciary duty rule concern you due to the negative impact on the retirement services market the SEC oversees? *White:* The SEC is concerned about anything that deprives investors of reasonable investment advice.

Himes (D-CT): Will the agency define insider trading? *White:* Defining insider trading is a challenge. The Department of Justice takes a different position as the SEC has a lower burden of proof.