

ICI VIEWPOINTS

MAY 22, 2014

SEC Chair White Stresses Need for FSOC to Consult Sources for Necessary Expertise

By Rachel McTague

Securities and Exchange Commission (SEC) Chair Mary Jo White today called for the U.S. Financial Stability Oversight Council (FSOC) to use outside expertise to the degree necessary in its process of designating systemically important financial institutions (SIFIs). She asserted that it is “enormously important for FSOC, before it makes any decision of any kind, to make sure it has the necessary expertise on any of those issues.”

White—a high-profile regulator with a long record of achievements as a U.S. prosecutor, a partner at Debevoise and Plimpton, and former board member at NASDAQ—made the remark in a question-and-answer session with ICI President and CEO Paul Schott Stevens at the Institute’s annual General Membership Meeting in Washington.

After Stevens outlined the case against SIFI designation for stock and bond funds and their managers, White replied, “I was tempted just to say ‘Amen!’ to that.” But, she added, “I can’t say that—I *didn’t* say that!” She went on to call the FSOC’s public conference this week on asset management a “good thing,” and affirmed the importance of FSOC using other sources of expertise—including industry expertise—beyond the Treasury Department’s Office of Financial Research (OFR).

In addition to FSOC’s consideration of asset managers as SIFIs, White discussed impending final rules to further regulate money market funds, reforms in regulating the capital markets, the use of empirical analysis in rulemaking, the Commission’s progress in the past year, its enforcement and compliance programs, and its tight budget constraints.

A Need for More Transparency at FSOC

Asked by Stevens whether the industry is overreacting to the FSOC focus on asset managers as a possible source of systemic risk, White said, “I don’t think you’re overreacting to the process. The issues are important on every side... Transparency is enormously important.”

However, White went on to say, most of the issues discussed in FSOC about the designation of SIFIs are “highly confidential,” and some of the information shared could be “market-moving.” She said the Council had made progress on transparency issues, but needs to continue improving its efforts along these lines.

When Stevens said he is not sure that the “remedies” that would be imposed on asset managers by SIFI designation “make a lot of sense,” White replied that, from her perspective, FSOC should be “looking very closely at, ‘What is it that you want to achieve? Do you solve the problem or not?’” by designating an entity as a SIFI.

‘Broken Windows’ Approach in Enforcement

When asked to assess her first year in office, White said that she is pleased with progress at the agency, but that “there is much more to do.” The former litigator said she found a strong enforcement program at the SEC, and that it has become even better. For example, she said, the program has been improved by a new requirement that, in certain circumstances, forces those settling SEC enforcement actions to admit wrongdoing. This provides public accountability, she explained.

Stevens’ drew White out about the “broken windows” approach to enforcement highlighted in her speeches. “If you don’t enforce

lesser violations,” she said, “that engenders a culture of ‘It’s fine not to comply with the law.’ ” She said the SEC wants to send a message that lesser violations matter, and noted that it also is important to send a “bold and unrelenting message” that the agency also pursues cases involving major fraud and other egregious violations.

The SEC Chair also agreed with Stevens’ assessment that the Commission “can’t be everywhere,” affirming the importance of firms’ self-policing and compliance efforts, and calling compliance officers “the first line of defense in an enforcement program.” She acknowledged that, in the few cases where the Commission had prosecuted board members or compliance officers, it has “come down pretty hard.” However, she added, it would “send the wrong message” to pursue board members and compliance who diligently seek to fulfill their duties.

Money Market Fund Rules—an Intensive Focus, Coming Soon

Though White declined to name just when the agency will issue its long-anticipated final rules to further regulate money market funds, she noted that it will be soon, and that the full commission and staff are intensively focused on completing this “front and center” rulemaking.

White said that the Commission trying to adopt “a robust, workable rule to address the issue we’re trying to address, and do it in the most cost effective way.” She stressed that the SEC wants to “accomplish what we need to in terms of structural reform, while preserving this very important product.”

The Commission’s empirical analysis of money market funds was very important and has been “enormously influential on our thinking,” White said. The Division of Economic and Risk Analysis is the Commission’s fastest growing division, she said, helping the agency to propose more informed rules, focus on high-risk areas, and deploy resources effectively.

Protecting the Capital Markets

Asked her thoughts about Michael Lewis’s book *Flash Boys*, which depicts the U.S. stock markets as “rigged” due to some market participants’ use of advanced trading technologies, White deadpanned, “*Moneyball* was a great book.” She continued, “I’m not going to do a book review, but the U.S. capital markets are the safest and most reliable in the world. They are not rigged. Obviously, they are not perfect.”

The perception that Wall Street is unfair is a concern, she said, because it is important that people have confidence in the markets. The SEC is intensively focused on developing market rules to address numerous concerns, and is being “data-driven and disciplined” about this. “This focus will continue,” she concluded.

Wrapping up the lively exchange, White told Stevens that her advice to the next generation is to “Work hard. Be yourself. Do not be shy about making changes if you’re motivated to do that.” Though she also cautioned, “Never be tempted to go over the line,” her emphasis was on finding satisfaction through one’s pursuits: “Find your spot. If it’s not satisfying enough, move.”

Rachel McTague is a director in ICI’s media relations department.