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SEC Chair White Affirms Agency Has Tools to Address Risks in Industry

The U.S. Securities and Exchange Commission (SEC) has the tools it needs to address systemic risks to the extent they exist in the asset management industry, said SEC Chair Mary Jo White at the opening session on the final day of ICI's annual General Membership Meeting (GMM). White also announced that David Grim—who had been serving as acting director of the SEC's Division of Investment Management—has just been named director of the division. White said she is thrilled that Grim, a 20-year veteran of the SEC in the investment management area, is taking the reins at a time when the Commission is moving forward to implement proactive regulations for the industry.

Adaptable and Appropriate

White—the first career prosecutor and litigator to head the agency—has spoken at GMM every year since she was confirmed for the post a bit more than two years ago. As she did last year, she fielded wide-ranging questions from ICI President and CEO Paul Schott Stevens.

White said that under the 1940 Investment Company Act, the regulatory tools at the Commission's disposal are adaptable, and appropriately so. The regulatory regime for funds has evolved over the years as the markets, risks, and products have evolved, she noted. Risk regulation by the SEC is driven by its core mission of protecting investors, overseeing and protecting the capital markets, and encouraging capital formation, White explained.

"We're not about eliminating risk. We're about eliminating excessive risk and systemic risks. And I think what the SEC needs to do even more...is really to assert that perspective," she asserted. "Because that's the core of what the SEC's about. It's its strength and it's enormously important to the economy that that voice be heard, and be heard widely," she said.

The Challenge of "One Size Fits All"

White also affirmed the Financial Stability Oversight Council's "enormously important" responsibility to assess and address financial stability and systemic risk issues, as mandated by the Dodd-Frank Act. Nonetheless, she suggested that the tools that the Dodd-Frank Act gave to the council to carry out its job were built as "one size fits all"—which can present a challenge in the context of the council's authority to designate systemically important financial institutions (SIFIs).

Tools provided by the Act may need to be adjusted in the asset management space, as has been done with respect to FSOC's SIFI-designation process for insurance firms, White noted.

In addition, she emphasized, that the assessment of whether a firm could be designated as a SIFI “doesn’t necessarily mean that it has to be or it should be designated.” She continued, “There are regulatory responses to those risks that make sense. Perhaps they have already been taken by the SEC. Perhaps they are being taken by the SEC.”

In global regulatory discussions, the SEC’s role “couldn’t be higher,” White told the gathering. SEC staff provides expertise and extensive support to the work streams and the committees of the Financial Stability Board (FSB) and the International Organization for Securities Commissions (IOSCO), she explained. In those organizations, the SEC—as a regulator exclusively of capital markets—is “the strongest voice” and best source of intelligence about the markets. All perspectives are needed, and because central bankers play a prominent role in these global regulatory bodies, the SEC’s voice is essential, she added. White also said it would be beneficial to add further capital markets perspective and participation in global regulation.

A Focus on Data Reporting, Liquidity Management, and Derivatives

Stevens and White discussed the rulemaking priorities in the areas of enhanced data reporting, liquidity management, and derivatives regulation for the fund industry, which she had outlined in a December speech. She echoed Stevens’ remark that the job of regulating the markets is never done, explaining that “the markets evolve, the risks evolve, and innovations evolve.” If anyone ever says that regulators have reached the optimal level for regulation of the markets, the regulators “wouldn’t be doing [their] job—that’s not the reality,” she said.

With respect to liquidity management, the SEC leader made the point that “enhancement of standards need to be brought forward,” including, for example, the definitions of “liquidity” and “illiquidity.” In addition, securities lending by funds, and more transparency of separately managed accounts, are areas of focus for the Commission.

Looking to Move on the Fiduciary Rule

Speaking about a recent proposal by the Department of Labor (DOL) to redefine the definition of “fiduciary” for providers of securities investment advice to retirement plan participants, White said the SEC has been providing technical assistance to the DOL. This effort is intended to help ensure that the SEC’s rulemaking to define fiduciary outside the retirement space, she said, will be consistent with the rule that DOL finalizes.

She reaffirmed her “personal view” that the commission should proceed with a rule that would impose a uniform fiduciary duty on investment advisers and broker-dealers, taking into account the parameters given in Dodd-Frank and the business model of brokerage firms. It should be a high standard, she said, and retail investors should understand the duty their adviser is operating under.

“The fiduciary standard would apply to investment advisers—but it isn’t a meaningful standard unless it is enforced,” she stressed. Thus, because of resources and budgetary challenges at the SEC, White said that the Commission is exploring a program that would enable it to use third-party examiners to help it oversee the more than 11,600 investment advisers it regulates. These third parties would not supplant the SEC’s examination staff, she explained, but supplement its efforts. “We’ve been looking at that gap for far too long. We have to close it,” White said. Despite leveraging technology in its efforts, the SEC staff currently can cover only about 10 percent of advisers in its examinations, she told Stevens.

Putting Cyber Threats at Top of Her List

White also spoke to Stevens about the Commission's approach to addressing cyber threats in the industry, citing the agency's newly published guidance on the issue and a newly announced compliance initiative by the SEC that will include cybersecurity as a focus. "It is the biggest systemic risk we have facing us," White urged, noting that in the private and public sector, "everyone gets how high-level an issue this is." Her advice for FSOC? "Put this at the top" when drafting its annual report, which is due out soon.

White also acknowledged that the SEC still is focused on developing a rule to help sponsors of exchange-traded funds (ETFs) avoid the complicated process of obtaining an SEC regulatory exemption as a preliminary step to launching a new ETF. However, she admitted, at the moment the Commission's rulemaking priorities for asset management that she announced in December are front and center.

In summing up, she explained that the importance of the expertise and dedication of the SEC staff cannot be overstated. This, coupled with some structural changes and other improvements the Commission has made in the wake of the financial crisis, has contributed to tremendous progress on all fronts.

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