



“Efficiency Nut?”

Evaluating the Rulemaking Progress at the Securities and Exchange Commission

Acknowledgments

This paper was written by Bartlett Naylor, financial policy advocate at Public Citizen's Congress Watch, with research provided by Peter Perenyi. Lisa Gilbert, Congress Watch Director, edited the report.

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Public Citizen's Congress Watch
215 Pennsylvania Ave. S.E
Washington, D.C. 20003
P: 202-546-4996
F: 202-547-7392
<http://www.citizen.org>

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The 2013 nomination of Mary Jo White to chair the Securities and Exchange Commission evoked a mixed reaction. Given the massive fraud associated with the financial crash, some applauded her nomination because of her background as a former prosecutor who once led the U.S. Attorney's Office for the Southern District of New York (SDNY). Others worried that her subsequent career as a white collar criminal defense attorney at Debevoise & Plimpton might negate that history of prosecution. Commenters, including former colleagues, agreed on one positive trait: she gets things done efficiently. Those closely watching the SEC hoped that those skills would help clear the backlog of rules needed to finally fully implement the Dodd Frank Wall Street Reform Act. Under White's predecessors, the SEC had lagged far behind the Commodity Futures Trading Commission in promulgating and finalizing similar rules, even though the CFTC was much smaller and faced severe budget constraints. The SEC also lagged behind the prudential banking regulators.

As a self-described "efficiency nut,"¹ White promised at the outset to rectify the pace of rulemaking. At her confirmation hearing, White pledged to "finish in as timely and smart a way as possible" the rule-making mandates. "The SEC needs to get the rules right, but it also needs to get them done. To complete these legislative mandates expeditiously must be an immediate imperative for the SEC"²

So has it happened?

Public Citizen examined the "Agency Rule List" for the Securities and Exchange Commission. The SEC (along with other agencies) submits this list twice a year to the Office of Information and Regulatory Affairs, a division of the Office of Management and Budget (OMB), which is an executive office of the president. It is posted in the spring and the fall,

¹ "Mary Jo White Defies Political Meddling," Bloomberg (April 2014), available at: <http://www.bloomberg.com/news/2014-04-11/sec-s-mary-jo-white-defies-political-meddling-in-year-one.html>

² Testimony of Mary Jo White Before the Committee on Banking, Housing, and Urban Affairs, United States Senate; March 12, 2013; Available at: http://www.banking.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=619e5603-c2c8-4085-98c6-0014ce29bde7

and each list covers regulations the agencies intend to address during the subsequent 12 months.³

The activities included in individual agency agendas are primarily those currently planned to have an Advance Notice of Proposed Rulemaking (ANPRM), a Notice of Proposed Rulemaking (NPRM), or a Final Rule issued within the next 12 months. The SEC list includes what it calls "proposed rule stage." This means rules that it intends to propose and request public comment on by a certain date. Included in the "final rule stage" are rules that it has already proposed and it intends to finalize by a certain date.

The first rulemaking agenda released during White's tenure (in July 2013) was shorter than those issued by her predecessors. In response to criticisms of that agenda, including its failure to include previously listed items of particular importance to investors, White said that she was reserving the agency's official agenda for measures moving forward within the next year.

However let's examine the numbers:

White was confirmed as SEC Chair on April 10, 2013. At this point, the SEC was already preparing its submissions to OMB, which were due to OMB on April 24, 2013.⁴ The administration subsequently released the Spring 2013 Unified Agenda of Regulatory and Deregulatory Actions on July 3, 2013.⁵ Chair White exercised final determination on the agenda items and proposed deadlines. However, given the considerable volume of the planned rules on an agenda she inherited early in her tenure, we chose to examine the progress she has overseen as reflected in the Fall 2013 and Spring 2014 agendas over which she enjoyed ample time to deliberate, and not from the Spring 2013 agenda.

³ Since 1978, federal agencies such as the SEC have been required by executive orders to publish agendas of regulatory and deregulatory activities twice a year. The Regulatory Plan is published as part of the fall edition of the Agenda with detail about the most important significant regulatory actions that agencies expect to take in the coming year. The plan is updated in the spring as part of a corresponding requirement in the Regulatory Flexibility Act. This requires that agencies publish semiannual regulatory flexibility agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for the Unified Agenda.

⁴ Memorandum, Office of Management and Budget (March 28, 2013) Available at:

<http://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/spring-2013-agenda-data-call.pdf>

⁵ Executive Branch Review (July 2013). Available at: <http://www.executivebranchproject.com/2013-unified-agenda-of-regulatory-and-deregulatory-actions/>

	Number Listed in SEC's Fall 2013 Agenda	Number of Rules From Fall 2013 Agenda Listed With Later Due Date in Spring 2014 Agenda	Percent of Rules Delayed
Items in Proposed Rule Stage	15	8	53%
Items in Final Rule Stage	23	13	57%

We found that under Chair White's tenure, the expected completion dates for completion of 53 percent of items listed in the "proposed rule" section of the Fall 2013 regulatory agenda were pushed back in the Spring 2014 agenda. [See Appendix A]

Meanwhile, the expected dates for SEC completion of 57 percent of rules listed in the "final rule" stage in the Fall 2013 agenda were pushed back in the Spring 2014 agenda. The Fall 2013 agenda scheduled most of these rules for completion by October 2014. Most of these rules are now slated for completion in March 2015. [See Appendix B]

The financial crash began in 2007 and precipitated global panic in September 2008. Nearly seven years later, and four years after Congress responded with the Dodd-Frank Wall Street Reform Act, the SEC has failed to implement numerous rules meant to protect citizens from another meltdown. Public Citizen calls on the agency to complete these long overdue rules.

Appendix A: Rules Listed in Fall 2013 SEC Regulatory Agenda as Being in Proposed Rule Stage

Proposed Rule	Expected Completion Date of Proposed Rule (NPRM) Listed in Fall 2013 Agenda	Proposed Rule on Prior Agenda(s)?	Expected Completion Date of Proposed Rule (NPRM) Listed in Spring 2014 Agenda	Delayed?
Compensation Claw back	October 2014	Yes	October 2014	No
Pay For Performance	October 2014	Yes	October 2014	No
Rules Governing the Offer and Sale of Securities Through crowd funding Under Section 4(a)(6) of the Securities Act	Although the SEC listed this among upcoming proposed rules in its Fall 2013 agenda, the SEC had already published the proposed rule at that time	Yes	Comment Period on final rule ended February 3, 2014. Final action due October 2014	No
Implementation of Title I of the Jumpstart Our Business Startups Act	October 2014	Yes	March 2015	Yes
Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act	November 2013	Yes	NPRM published January 23, 2014. (Comments due 3/24. Final action due October 2014)	Yes
Implementation of Titles V and VI of the JOBS Act	December 2013	Yes	October 2014	Yes
Treatment of Certain Communications Involving Security-Based Swaps That May be Purchased Only by Eligible Contract Participants	October 2014	Yes	May 2014	No
Registration of Security-Based Swaps	October 2014	Yes	March 2015	Yes
Disclosure of Hedging by Employees, Officers and Directors	October 2014	No	October 2014	No
Enhanced Disclosure for Separate Accounts Registered as Unit Investment Trusts and Offering Variable Annuities	October 2014	Yes	March 2015	Yes
Form N-SAR and Portfolio Holdings Reporting Reform	October 2014	Yes	October 2014	No
Commission Guidance Regarding Definitions of Mortgage Related Security and	October 2014 (in this case, the SEC listed the upcoming milestone as "Next Action,"	Yes	March 2015 (the Spring 2014 agenda now lists	Yes

Proposed Rule	Expected Completion Date of Proposed Rule (NPRM) Listed in Fall 2013 Agenda	Proposed Rule on Prior Agenda(s)?	Expected Completion Date of Proposed Rule (NPRM) Listed in Spring 2014 Agenda	Delayed?
Small Business Related Security	whereas it lists "NPRM" for most other rules in this section.)		the next milestone as "NPRM."	
Reporting and Recordkeeping Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants	December 2013	Yes	NPRM published May 2, 2014 (comments due July 1, 2014.)	Yes
Standards for Covered Clearing Agencies	December 2013 (in this case, the SEC listed the upcoming milestone as "Next Action," whereas it lists "NPRM" for most other rules in this section.)	No	NPRM published March 26, 2014 (comments due May 27, 2014)	Yes
Broker-Dealer Leverage Ratio	October 2014	No	October 2014	No

Appendix B: Rules Listed in Fall 2013 SEC Regulatory Agenda as Being in Final Rule Stage

Rule	Date Final Rule Expected, as Listed in Fall 2013 Agenda	Status in Spring 2014 Agenda	Delayed?
Asset-Backed Securities	November 2013	Final Action due May 2014	Yes
Amendments to Regulation D, Form D and Rule 156 under the Securities Act	October 2014	October 2014	No
Pay Ratio Disclosure	October 2014	October 2014	No
Exchange-Traded Funds	October 2014	Publication as newly named <u>Proposed Rule</u> .	Yes
Investment Company Advertising: Target Date Retirement Fund Name and Marketing	October 2014	March 2015	Yes
Money Market Fund Reform; Amendments to Form PF	October 2014	Final Action moved up to May 2014, but not accomplished	No
Reporting of Proxy Votes on Executive Compensation and Other Matters	October 2014	October 2014	No
References to Credit Ratings in Certain Investment Company Act Rules and Forms	December 2014 (fix required by Dodd Frank to regulation due to take effect in December 2013 (no comments apparently solicited))	Final Action was taken on January 8 (effective July 7), and an additional final action is due in October. The January action may have been the one due in December.	Yes
Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Exchanges	October 2014	March 2015	Yes
Prohibition Against Fraud, Manipulation, and Deception in Connection With Security-Based Swaps	October 2014	March 2015	Yes
Security-Based Swap Data Repository Registration, Duties, and Core Principles	October 2014	October 2014	No
Regulation SBSR--Reporting and Dissemination of Security-Based Swap Information	October 2014	October 2014	No
End-User Exception to Mandatory Clearing of	October 2014	October 2014	No

Rule	Date Final Rule Expected, as Listed in Fall 2013 Agenda	Status in Spring 2014 Agenda	Delayed?
Security-Based Swaps			
Trade Acknowledgement and Verification of Security-Based Swap Transactions	October 2014	March 2015	Yes
Registration and Regulation of Securities-Based Swap Execution Facilities	October 2014	March 2015	Yes
Prohibition Against Conflicts of Interest Relating to Certain Securitizations	October 2014	March 2015	Yes
Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants	October 2014	March 2015	Yes
Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants	October 2014	March 2015	Yes
Capital, Margin, Segregation, Reporting and Recordkeeping Requirements for Security-Based Swap Dealers	October 2014	March 2015	Yes
Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934	December 2013	(not listed because rule went final in either late December 2013 or early January 2014, based on varying reports)	No
Rules for nationally recognized statistical rating organizations	October 2014	Listed as "Final Action," May 2014 but rule is not yet finalized	No
Regulation of Cross-Border Security-Based Swap Activities	October 2014	March 2015	Yes
Regulation Systems Compliance and Integrity	October 2014	October 2014	No