

[Securities Regulation Daily Wrap Up, TOP STORY—Sen.: Warren calls for Chair White's demotion, \(Oct. 14, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Mark S. Nelson, J.D.](#)

Senator Elizabeth Warren (D-Mass) sent President Obama a 12-page letter calling on him to demote SEC Chair Mary Jo White to commissioner from her current role as Chair of the federal securities regulator. Warren said the president should take this "uncommon act" in order to kick start the agency's investor protection mandate after years of what the senator [characterized](#) as White's "anti-disclosure agenda."

Political disclosure rules. Warren opened her letter with a rebuke of what she sees as White's "brazen" attempt to dodge the question of whether public companies should disclose their political spending habits to investors. The political disclosure issue had become even more charged after the Supreme Court's *Citizens United* decision. But the senator's letter casts a wider net by also criticizing White's disclosure effectiveness initiative and the agency's slow pace in finishing numerous congressionally mandated rules dealing with the financial fallout from the Great Recession.

On the political disclosure front, the SEC has received millions of comment letters on petitions calling for rules that would make companies' political spending more transparent, despite the agency's having not yet taken action to propose or adopt such rules. In fact, last year's [omnibus](#) appropriations legislation and the currently effective continuing resolution ([H.R. 5325](#)) that funds the federal government until December 9 bar the SEC from finalizing rules mandating that companies disclose their political spending. The Commission's role in allowing an MSRB political spending rule to become effective by operation of law is currently at the heart of a law suit claiming the agency violated the omnibus rider ([SEC brief](#); [State Republican committees' brief](#)).

Warren noted the omnibus and CR riders by their terms only prevent the Commission from finalizing political disclosure rules; she said the Commission is free to plan or develop rules that require companies to make these disclosures. According to Warren, White's term as SEC Chair "reversed course" from the path former Chair Mary Schapiro set the agency on towards proposing rules on political spending.

Today's letter is not the first time Warren has publicly clashed with White. In June 2015, Warren [wrote](#) to tell White she felt the SEC chair's leadership of the agency was "extremely disappointing," a refrain Warren repeated at the end of a tense exchange during White's latest [testimony](#) before the Senate Banking Committee.

Warren had [queried](#) White about what evidence of "information overload" the SEC had to back up its decision to create the disclosure effectiveness initiative, which Warren said was a voluntary choice by the agency and could result in less information about public companies for investors. Warren ended her questioning by reiterating her concerns about White by stating "Today I am more disappointed than ever."

White replied, "And I'm disappointed in your disappointment." White continued: "And could not disagree any more with your characterization of what we're trying to do to improve our disclosure regime for investors, to make it better." When Warren suggested they could talk further once the SEC produced evidence of a need for less disclosure, White suggested the senator read the agency's Regulation S-K Concept Release.

When President Obama [nominated](#) White to the Commission, he said "You don't want to mess with Mary Jo," a reference to her prior work as Manhattan U.S. Attorney. White also might point to the SEC's enforcement [achievements](#) in FY 2016 as examples of how the agency has evolved during her tenure. As for finishing the Dodd-Frank Act rulemakings cited by Warren, White [said](#) yesterday that final derivatives rules could be ready in the "near term."

Demotion would be rare event. Despite the fact that presidential nominations to fill Commission vacancies require Senate confirmation, Warren urged the president to invoke his other authorities to designate a new SEC chair. Warren cited the president's use of this authority to [designate](#) Elisse Walter as chair. Walter served as a commissioner from July 2008 until she was designated chair, a title she held until April 2013 when White was [sworn](#) in as chair.

Warren's call for White's demotion by the president is rooted in a 1950 [reorganization](#) of the Commission and a related rule. Former SEC Commissioner Luis Aguilar writing in another context as he was preparing to leave the Commission, [explained](#) the breadth of the reorganization, including how the chair now sets the Commission's agenda via powers not granted to the other commissioners. The president's authorities are contained in the following:

- **17 C.F.R. §200.10**—"The Commission is composed of five members, not more than three of whom may be members of the same political party. The members are appointed by the President, with the advice and consent of the Senate, for 5-year terms, one term ending each year. The Chairman is designated by the President pursuant to the provisions of section 3 of Reorganization Plan No. 10 of 1950 (3 CFR, 1949-1953 Comp., p. 1006). The Commission is assisted by a staff, which includes lawyers, accountants, engineers, financial security analysts, investigators and examiners, as well as administrative and clerical employees."
- **Reorganization Plan No. 10 of 1950**—Section 3: "The functions of the Commission with respect to choosing a Chairman from among the Commissioners composing the Commission are hereby transferred to the President."

As the Obama Administration begins to draw to a close, Lisa Fairfax and Hester Peirce, the president's nominees to fill vacancies on the Commission, remain on the Senate's [Executive Calendar](#). A new administration typically brings with it the almost traditional departure of many agency heads appointed by the previous administration.

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