

[Securities Regulation Daily Wrap Up, TOP STORY—Chair White says SEC will act on important rulemakings by end of administration, \(Dec. 13, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Lene Powell, J.D.](#)

Stressing the need for the Commission to "exhibit a spirit of firm independence," SEC Chair Mary Jo White told two top Republicans on the Senate Banking Committee that she intends to proceed with a number of planned rulemaking actions, including adopting rules relating to security-based swaps, the use of derivatives by investment companies, and the orderly liquidation of broker-dealers, among others.

"In light of our long-standing agenda and our duties as Commissioners, my intention is to move forward with the above items as planned, assuming the Commission has a quorum to act," White wrote in a December 12 [letter](#) to Committee Chairman Sen. Richard Shelby (R-Ala) and Sen. Mike Crapo (R-Idaho), chairman of the Subcommittee on Securities, Insurance, and Investment.

White has previously [announced](#) that she will leave the Commission at the end of the Obama administration, leaving little time to complete pending rulemakings.

"Defying lawmakers." In a [press release](#) on December 13, House Financial Services Committee Chairman Jeb Hensarling (R-Tex) doubled down on his [previous warning](#) to White to avoid any "midnight rulemaking" on her way out. According to Hensarling, the press has said White is "defying lawmakers" by proceeding with rulemakings, but in reality she is defying the will of the American people and good government.

"As the clock runs down on the Obama Administration, Chair White and all other regulators who may be tempted to hastily impose another pile of complicated regulations on our economy should know that Congress will scrutinize their actions and—if appropriate—overturn them," wrote Hensarling.

Rulemaking agenda. In her letter, White gave a list of items on the SEC rulemaking agenda that are ready for Commission consideration:

- Adopting rules to establish capital, margin, and segregation requirements for security-based swap dealers and major security-based swap participants;
- Adopting rules regarding recordkeeping, reporting, and notification requirements for security-based swap dealers and major security-based swap participants;
- Adopting rules regarding the orderly liquidation of certain broker dealers;
- Adopting Rule 30e-3 regarding an optional method for investment companies to transmit shareholder reports by web posting;
- Adopting rules to regulate registered investment companies' use of derivatives and require enhanced risk management measures;
- Adopting rules to facilitate certain communications in connection with security-based swap transactions;
- Proposing rules to require the use of the inline XBRL format in the submission of certain Commission filings; and
- Requesting comment on statistical and other disclosures by bank holding companies and other financial institutions.

Post-election rulemaking. White's letter was in response to concerns Shelby and Crapo raised in a November 30 letter to her regarding post-election rulemaking. White said she was "not insensitive" to the senators' concerns. However, the pending rules have been on the SEC agenda for some time, and she believes they will significantly further the Commission's mission for the benefit of investors and the securities markets.

According to White, SEC staff has worked hard for months to get rules ready for the Commission, and she has publicly discussed several as year-end priorities. Completing statutory mandates for rules on security-based swaps has been a "particularly high priority" for all commissioners, she said.

She said she has carefully considered what impact, if any, the election should have on the pending items. Observing that the Commission has historically acted on consequential rules in post-election periods, she said it was incumbent on the Commission to "exhibit a spirit of firm independence" and perform its duties to effect statutory enactments "without fear or favor."

White said the Commission could act on the rules by open meeting or seriatim vote.

Third-party exams set aside. One pending rulemaking, however, will not be acted on. White said she does not intend to proceed on rules that would require registered advisers to submit to third-party compliance assessments, due to insufficient support within the Commission.

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