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THERE'S SOMETHING ABOUT MARY: AN INTRODUCTION TO SEC CHAIRMAN MARY SCHAPIRO AND WHAT TO EXPECT DURING HER TERM

In December 2008, then President-Elect Barack Obama announced his choice of Financial Industry Regulatory Authority's ("FINRA") CEO, Mary L. Schapiro, to succeed Chairman Christopher Cox as the Securities and Exchange Commission ("SEC") Chairman. On January 20, 2009, the President appointed and the Senate unanimously confirmed Ms. Schapiro as SEC Chairperson. With a reputation for regulatory enforcement and regulation reform, Schapiro's appointment sent a clear message to the financial services industry to be on the lookout for increased transparency and oversight obligations.

Background

Chairman Schapiro has had a long career in the regulatory industry. From December 1998 to October 1994, Chairman Schapiro served as a Commissioner at the SEC through back-to-back appointments by Presidents Ronald Reagan and George H.W. Bush. Four years later, she was named Acting Chairman by President Bill Clinton where she remained until her appointment as Chairman of the Commodity Futures Trading Commission ("CFTC") in 1994. In 1996, Chairman Schapiro joined NASD Regulation as President and was named Vice Chairman in 2002. In 2006, she was named NASD's Chairman and CEO. The following year, she led the organization's consolidation with NYSE Member Regulation to form FINRA.

What to Expect

In recent speeches since her appointment, Chairman Shapiro has outlined her overall vision for the SEC and the initiatives that she, as Chairperson, plans to implement (and in some cases, already have) regarding SEC enforcement, policy and rule-making.

In an early February speech to the Practicing Law Institute, Chairman Schapiro shared that the role of the SEC will be as "investor advocate." As investor advocate, the SEC will "move with great urgency to bring transparency and accountability to all corners of the marketplace, vigorously prosecute those who have broken the law and cheated investors, and modernize our country's regulatory system to match the realities of today's global, interdependent markets."[1] To execute the process, the SEC plans to enhance its enforcement process by prosecuting to the fullest extent of the law those who violate regulations and take advantage of investors. In addition, the SEC will form an "Investor Advisor Committee" whose role will be to tackle those issues most concerning to investors. Finally, as a preview to those initiatives she considers as her top priorities, Chairman Schapiro shared that in addition to improving issues related to credit rating agencies and the potential move toward centralized clearinghouses for credit default swaps, under her watch the SEC will aim “[to strengthen] risk-based oversight of broker-dealers and investment advisers”[2] and also protect and safeguard customer assets by “improving the quality of audits for non-public broker-dealers”[3] as already evidence by the recent developments in Public Company Accounting Oversight Board (“PCAOB”) accounting requirements.

Based on the foregoing, many in the industry speculate that investment advisers and hedge fund managers will be subject to heightened scrutiny and regulation. Recent trade publications acknowledge the likelihood that investment advisers and hedge fund managers will soon be held to FINRA-type standards, especially given Chairman Schapiro’s previously expressed concern that advisors are under-regulated.

Recent Rule Proposals

On January 29, 2009, Senators Chuck Grassley and Carl Levin introduced legislation known as the “Hedge Fund Transparency Act of 2009” in an effort to close an existing loophole in securities law that allowed hedge funds to operate under a “cloak of secrecy.”[4] According to Senator Levin, the purpose of the bill is to “to make it clear that the [SEC] has the authority to require hedge fund registration… [and] require hedge funds to establish anti-money laundering programs and report suspicious transactions.”[5] Indeed, when asked her thoughts concerning hedge fund regulation, Chairman Schapiro stated that she “believe[s] that all systemically important financial institutions need to be regulated… [and that she] would specifically endorse the registration of hedge funds.”[6]

What Firms Need to Do

Firms should expect the SEC to focus its efforts on increasing transparency, accountability and risk-based oversight in the marketplace. Therefore, firms should start by assessing their current business model and the nature of its firm’s activities, while keeping in mind each firm’s own size and capabilities. If Chairman Schapiro’s tenure with FINRA is any indication, the SEC will likely hold investment advisers and hedge funds to risk-based principles regarding regulatory obligations in an effort to accommodate firms of all sizes and capabilities. Accordingly, keep in mind the following tips in order to be prepared for these foreseeable regulatory changes.

Have you:

☐ Yes ☐ No Reviewed your policies and procedures to ensure it is up-to-date and kept in line with firm business activities?

☐ Yes ☐ No Verified that internal controls and supervisory obligations are complied with and if not, address the weaknesses accordingly?

□ Yes □ No Reviewed your firm's fair value and valuation processes, including those used by third-party providers, especially in light of today's markets, to ensure that valuations are accurate?

□ Yes □ No Ensured that your firm's marketing and advertising materials have received compliance pre-approval to make certain they are not incomplete and/or materially misleading and have appropriate risk disclosures in light of recent market events?

□ Yes □ No Tested your firm's business continuity plan, including internal and back-up data storage of electronic books and records and disaster recovery efforts?

In today's market and regulatory climate, it is imperative for broker-dealers, investment advisers and hedge funds alike to examine and bolster their current internal controls and supervisory systems to ensure their compliance programs are up to the foreseeable regulatory standards.

For more information, or to learn about how CCLS may be of assistance, please do not hesitate to contact us at (619) 278-0020.

Author: Michelle L. Jacko, Esq., CEO and Christina Rovira, Legal Compliance Advisor, Core Compliance & Legal Services ("CCLS"). CCLS works extensively with investment advisers, broker-dealers, investment companies, hedge funds and banks on regulatory compliance issues. For more information about this topic and other compliance consultation services, please contact us at (619) 278-0020, info@corecls.com or visit www.corecls.com.

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[1] Speech by SEC Chairman: Address to Practising Law Institute's "SEC Speaks in 2009" Program *By* Chairman Mary L. Schapiro, *U.S. Securities and Exchange Commission*, Ronald Reagan International Trade Center, Washington, D.C. February 6, 2009 available at *http://www.sec.gov/news/speech/2009/spch020609mls.htm.*
[2] Id.
[3] Id.
[4] Press Release, Senator Chuck Levin available at http://levin.senate.gov/newsroom/release.cfm?id=307481.
[5] Id.
[6] Cohen, Lawrence, *What to Expect From Mary Schapiro's SEC***,** Gibbons Corporate & Finance Alert (February 3, 2009) available at http://www.gibbonslaw.com/news_publications/articles.php?action=display_publication&publication_id=2671.