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What Can Help Restore Investor Trust? Maybe the SEC



By DAVID WEIDNER

Let's cut to the chase: The Securities and Exchange Commission needs to get tougher.

If polls about market trustworthiness are any indication, faith in the SEC is near an all-time low. Many investors feel the game is rigged. They feel at the mercy of high-frequency traders and big brokerages. Even the issuers feel their securities are being used as pawns in a game.

There have been multiple "flash crashes." The SEC was dismissed as flat-footed or a pushover as Bernard L. Madoff pulled off his longtime Ponzi scheme and MF Global Holdings Ltd. collapsed.

Critics have longed for a meaningful overhaul of the SEC ever since New York prosecutor Eliot Spitzer pantsed the agency by bringing a string of blockbuster cases against Wall Street more than a decade ago.

There have been baby steps. Under Mary Schapiro, the SEC is considered an improved outfit. Robert Khuzami, who is stepping down as enforcement chief, brought insider-trading cases that hearkened back to the 1980s and Ivan Boesky. It was the commission's last golden era.

Mr. Khuzami said the SEC now has a much better handle on electronic trading, which has become a priority.

Still, even the most ardent supporters must admit that the SEC continues to stumble. Its standards for notching wins are low, and the agency has been criticized by federal judges for agreeing to settlements that hurt shareholders and fail to make individuals accountable.

Two developments have the potential to shake up the agency.

The first is legislative. There's renewed interest in strengthening the SEC's ability to bring stiff penalties. Sens. Charles Grassley (D., Iowa) and Jack Reed (D., R.I.) have introduced a bill to increase fines, which would jump from \$150,000 to \$1 million for individuals. The fines could be tripled in some cases.

Mr. Grassley and Sen. Sherrod Brown, (D., Ohio) also have asked U.S. Attorney General Eric

Holder about the Justice Department's reasoning for not prosecuting misconduct in the financial industry, including the missteps of individuals.

Even if fruitless, the moves signal that there is at least some political unease with a regulatory process that seems more interested in closure than justice.

The second development is nomination of former federal prosecutor Mary Jo White as SEC chairman. The choice of Ms. White is a significant departure from a series of chairmen that have been political payoffs, lifelong bureaucrats or industry participants.

Even with her well-reported potential conflicts and the revolving-door nature of her career, the securities-law community is intrigued by the choice.

Lawyers are "encouraged that there's a prosecutor at the helm, not a bureaucrat," said Stuart Meissner, a former Wall Street prosecutor now in private practice.

Sean O'Shea, a former federal prosecutor specializing in securities fraud who now is in private practice, said skepticism about Ms. White's conflicts is overblown. "Her charge is going to be pretty aggressive and be concerned with that investor confidence," he said.

Robert Heim, who worked at the SEC during Ms. White's tenure as U.S. attorney for the Southern District of New York, said she's well-versed in the industry, and tied to it, but that her appointment was a clear message that enforcement was going to be a priority.

Ms. White sends "a tough signal to the markets," Mr. Heim said. Her role will require her to "successfully navigate whatever conflicts her career presents her with."

Whether or not Ms. White quiets the critics, turns out to be another Wall Street patsy, or the SEC gets a stronger hand through the proposed legislation, investors should be encouraged.

After a missed opportunity following the financial crisis, there seems to be recognition in Washington that more needs to be done, and it isn't just a matter of extracting more settlement dollars that hurts shareholders.

The SEC is at a pivotal point. The agency can continue to alternate between sluggish progress and setbacks. Or it can create a climate in which individuals and institutions are held accountable.

To succeed, the SEC will have to make the case that law and order isn't a challenge to free markets. It ensures them.

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