

President-Elect Obama Names SEC and CFTC Chairmen and Fed Governor

President-elect Barack Obama yesterday announced that Mary L. Schapiro will be the next SEC Chairman. She will be the agency's first female Chairman and will replace current Chairman Christopher Cox. At the same time, he announced Gary Gensler as the Chairman of the Commodity Futures Trading Commission and Dan Tarullo as a governor of the Federal Reserve Board. All of these positions will be subject to Senate confirmation.

Ms. Schapiro, Chief Executive Officer of the Financial Services Regulatory Authority ("FINRA"), was an SEC Commissioner from 1988 to 1994, and acting Chairman in 1993 and 1994. In 1994, President Clinton selected her to lead the Commodity Futures Trading Commission. In 1996, she joined the National Association of Securities Dealers as president of NASD Regulation, and was named chairman and CEO in 2006. She held that position until 2007, when NASD and NYSE Member Regulation merged to become FINRA. As CEO, she has been instrumental in the integration of NASD and NYSE Member Regulation and the development of the new FINRA.

Ms. Schapiro's nomination comes at a critical time for an agency that, like the financial markets and institutions it regulates and enforces, is in turmoil over a number of issues, including criticism for lack of oversight at the top concerning hedge funds, public companies, and financial derivative instruments that have been blamed for many of today's current economic troubles. Just two days ago, in a highly unusual move, Mr. Cox publicly blamed his staff for not exposing Bernard Madoff's alleged fraud sooner.

In past public statements, Ms. Schapiro has advocated a flexible, innovative regulatory approach, emphasizing investor protection and market integrity. And, when she was SEC Commissioner, she urged administrative efficiency. Thus, not surprisingly, we expect the SEC under Ms. Schapiro to be more vigorous and quicker in both its regulatory and enforcement activities than it has been under Chairman Cox.

We also expect that Ms. Schapiro will follow the broad policy objectives and regulatory approaches that President-elect Obama outlined during the campaign. Though the President-elect supported the bailout bill, he called for the measure to be temporary and coupled with tough new oversight and regulation of financial institutions, with a clear plan to restore private sector assets into private sector hands. He faulted years of philosophy in Washington and on Wall Street that viewed "even common-sense regulation and oversight as unnecessary," and "shredded" consumer protections. During his campaign, he outlined a number of specific regulatory changes he would recommend, including strengthening the Federal Reserve's oversight on non-commercial banks, requiring greater risk disclosure by firms, and doing away with overlapping regulators in favor of a more streamlined approach. He also indicated he would establish an independent federal oversight commission to advise the president and Congress on systemic risks to the financial sector.

On the enforcement side, we anticipate that, under Ms. Schapiro's stewardship, the staff's investigations are apt to be conducted more quickly, and the length of time between an Enforcement recommendation and Commission action, which has grown considerably under the current Chairman, will likely be reduced to previous levels. Substantively, we expect that, given Ms. Schapiro's extensive experience with and knowledge of the financial services industry, combined with current events in the marketplace, there will be a stronger enforcement focus firms in that industry, especially hedge funds. There should also be more activity with regard to larger

alleged accounting fraud matters, which were an Enforcement focus of Chairman Cox's predecessor, William Donaldson, and a reduced emphasis on smaller "retail frauds" such as "frauds on seniors," which were Chairman Cox's enforcement focus.

In terms of overall agency structure issues, Ms. Schapiro's experience both (a) at the SEC and CFTC and (b) in merging NASD and NYSE Member Regulation comes at an opportune time and suggests that the new administration may be contemplating a merger of the SEC and CFTC. In a 2005 interview, Schapiro commented on what she regarded as fundamental differences between the two agencies, noting that while the SEC is lawyer-driven and focused on investor protection, the CFTC is more economist-driven and focused on markets as fundamentally sound mechanisms for regulating behavior. Thus, she stated that the two agencies do not communicate well, citing their interaction in the market crisis of 1987. Both in that interview and in other public statements, Ms. Schapiro emphasized that tight cooperation between the two was crucial. If the two agencies are merged, we expect a swift effort to blend these different approaches, likely with a greater emphasis on investor protection than on allowing markets to regulate themselves.

Until the SEC-CFTC merger happens (if it does), the CFTC will be led by Mr. Gensler, who has served as Under Secretary of Treasury during the Clinton Administration, a Senior Advisor to the Senate Banking Committee, and a partner at Goldman Sachs. He is also a member of the Obama transition team. Consumer advocates have described him as independent-minded, and he also worked with former Senator Paul Sarbanes, one of the principal authors of the Sarbanes-Oxley Act. We thus expect that he, too, will be pro-enforcement and active in the regulatory areas as well.

Professor Tarullo, who was selected to fill one of two vacancies on the seven-member Federal Reserve Board, currently teaches international economic regulation, international law, and banking law at Georgetown University. He served in the Clinton Administration as Assistant Secretary of State for Economic and Business Affairs, as Deputy Assistant to the President for Economic Policy, and as Assistant to the President for International Economic Policy, and was also President Clinton's representative to the G7/G8 group of industrialized nations. Before working in the Clinton Administration, Professor Tarullo served as chief counsel on the staff of Senator Edward M. Kennedy. Professor Tarullo's private law practice focused on antitrust, financial markets, and international transactions. Recent reports indicated that Professor Tarullo had been advising President-elect Obama on the auto industry and that he would be selected to act as "car Czar" to continue to advise the new Administration on the auto industry.

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