

WSGR ALERT

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TWO NEW COMMISSIONERS SWORN IN AT THE
FEDERAL TRADE COMMISSION

Federal Trade Commission (FTC) Chairman Jon Leibowitz has sworn in two new appointees to the five-member commission following their confirmation by the Senate on March 3, 2010. Democrats Edith Ramirez and Julie Brill were sworn in on April 5 and 6, 2010, respectively. Brill most recently practiced consumer protection and antitrust law with the North Carolina Department of Justice, while Ramirez comes to the commission from private practice with a focus on intellectual property litigation and was a former Harvard classmate of and fundraiser for President Obama.¹ The new commissioners will replace Republican Deborah Majoras, who stepped down in March 2008, and Independent Pamela Jones Harbour, whose term ended last September. President Obama's appointments may signal increased enforcement for health care and technology companies.

Brill, Veteran State Enforcer

Julie Brill became the Senior Deputy Attorney General and Chief of Consumer Protection and Antitrust for the North Carolina Department of Justice in February 2009. Previously, Brill spent over 20 years as Assistant Attorney General for Consumer Protection and Antitrust for the State of Vermont. She was also a lecturer at the Columbia University School of Law and has

served as a vice chair of the Consumer Protection Committee of the American Bar Association Antitrust Section since 2004.

Brill's enforcement interests are likely to include financial scams, privacy issues, and issues in the pharmaceutical industry. In her statement before the Senate Committee on Commerce, Science, and Transportation,² Brill singled out several issues confronting the FTC: "data security, privacy, spyware, energy, and competition in the health care and pharmaceutical industry."³ She stated that her top priority would be to focus on financial schemes that have been perpetrated on consumers during the economic crisis, including "get rich quick" scams, foreclosure rescue and assistance scams, bogus government grant schemes, and credit scams.⁴

Brill's experience also indicates a strong emphasis on the health care and pharmaceutical industries. During her time in Vermont, the state focused on drug marketing practices.⁵ Brill was instrumental in pushing Vermont to require public disclosure of manufacturer payments and gifts to physicians, restricting drug manufacturers' use of doctors' drug prescription data for marketing purposes, and also helping to craft Vermont's settlements with pharmacy benefit managers accused of switching patients' prescriptions for financial gain.

Given Brill's background as a state enforcement official with extensive experience in pharmaceuticals, Leibowitz now has a close ally in the FTC's efforts to scrutinize the health care industry. Brill also is expected to be tough on those who violate consumer privacy and perpetrate scams on the public in the current economic climate.

Ramirez, Seasoned IP Litigator

Edith Ramirez was a partner in the Los Angeles office of Quinn Emanuel Urquhart & Sullivan, LLP, where she specialized in business litigation involving copyright, trademark, and antitrust and unfair competition claims. Ramirez received her law degree from Harvard University in 1992, serving with President Obama on the *Harvard Law Review*. She also worked for Obama's campaign as the Latino outreach director in California. Her clients at Quinn Emanuel included Mattel and The Walt Disney Company in intellectual property matters, as well as a number of clients in Latin media and entertainment.⁶ Ramirez also has extensive appellate litigation experience.

In her statement before the Senate Committee on Commerce, Science, and Transportation, Ramirez singled out financial services, health care, energy, and technology as industries that affect average consumers'

¹ For biographies of the two appointees, see <http://www.whitehouse.gov/the-press-office/president-obama-announces-more-key-administration-posts-11162009>.

² Nominations Hearing before the Senate Committee on Commerce, Science & Transportation, 111th Congress (2009) (statement of Julie Brill, Nominee, Federal Trade Commission).

³ *Id.*

⁴ *Id.*

⁵ See Dina Wisenberg Brin, "Obama FTC Nominee Brill Has Taken on Drug-Benefit Managers," Dow Jones Newswires (Dec. 15, 2009), available at <http://www.nasdaq.com/asp/stock-market-news-story.aspx?storyid=200912151406dowjonesdjonline000428&title=obama-ftc-nominee-brill-has-taken-on-drug-benefit-managers> (last visited April 6, 2010).

⁶ Edith Ramirez – Biography, <http://www.quinnemanuel.com/attorneys/ramirez-edith.aspx> (last visited April 6, 2010).

Continued on page 2...

Two New Commissioners Sworn In . . .

Continued from page 1...

daily lives.⁷ Ramirez noted that the FTC faces "new challenges brought about by rapid innovation, increased globalization, and continued economic uncertainty."⁸ She said that these challenges will continue to raise ever more difficult questions for the agency.⁹ While Ramirez's prior experience and nomination hearing statement suggest that she will focus on intellectual property issues in her antitrust enforcement role, her views on antitrust enforcement are less clear. As she noted in her statement, she has "advocated for large corporations" and is also "committed to serving the public interest."¹⁰

Impact of New Appointments

FTC commissioners are appointed to seven-year terms. Brill and Ramirez will join current FTC Chairman Jon Leibowitz (Democrat appointed in 2004, appointed chairman in 2009) and Commissioners William E. Kovacic (Republican appointed in 2006) and J. Thomas Rosch (Republican appointed in 2006). The FTC previously was operating with only four commissioners, as Majoras (Republican) had stepped down in 2008. With the replacement of Harbour (Independent, but strongly pro-enforcement) and the additions of Brill and Ramirez, Chairman Leibowitz now has a solid majority of appointed Democrats.

The FTC is currently engaged on a number of fronts in antitrust enforcement and consumer protection. In antitrust, the FTC has pressed for legislation that would end litigation settlements in which a brand drug

manufacturer makes net payments to a potential generic entrant, which the FTC has alleged leads to delayed generic market entry in the pharmaceutical industry. The FTC also issued a complaint against Intel Corporation, alleging that the company has illegally used its dominant market position in microprocessors to stifle competition in graphics chips and strengthen its processor monopoly. On the consumer-protection front, the FTC has been active on privacy and data-security issues and is in the process of reevaluating its approach to privacy. A report proposing a new analytical framework in the privacy area is expected later this year. The FTC also recently proposed guidelines for websites to comply with the FTC's Children's Online Privacy Protection Rule. The guidelines would require websites that are directed at children under 13 years of age and that collect personal information from them to notify parents and obtain their consent before collecting, using, or disclosing any such information. Because Commissioner Rosch has historically supported aggressive antitrust enforcement, the new Democratic majority may not result in a significant change in FTC antitrust enforcement. However, the additions of Brill and Ramirez could push the FTC even further in the direction of enforcement on close-call decisions.

For more information on the FTC's new commissioners, please contact Susan Creighton, Lydia Parnes, Seth Silber, or another member of Wilson Sonsini Goodrich & Rosati's antitrust practice.



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⁷ Nominations Hearing before the Senate Committee on Commerce, Science & Transportation, 111th Congress (2009) (statement of Edith Ramirez, Nominee, Federal Trade Commission).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*