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SECURITIES DOCKET
GLOBAL SECURITIES LITIGATION AND ENFORCEMENT REPORT

SEC Enforcement: 2016 in Review and Looking Ahead to 2017

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I. Introduction

Enforcement activity increased again in fiscal year 2016, and the U.S. Securities and Exchange Commission ("SEC") continued to pursue a broad agenda. Consistent with former Chair Mary Jo White's "broken windows" enforcement policy, the Division of Enforcement brought actions "that spanned the spectrum of the securities industry."[1] In total, the SEC brought 868 enforcement actions, the most in the agency's history.[2] Of the 868 actions, 548 were "stand alone" cases, another SEC record.[3] The actions resulted in over $4 billion in disgorgement and penalties, down just slightly from fiscal year 2015's record of $4.19 billion.[4]

II. New Records and First-of-Their Kind Actions

The SEC continued to pursue a range of cases "exposing financial reporting-related misconduct by companies and their executives and misconduct by registrants and gatekeepers, as the agency continued to enhance its use of data to detect illegal conduct and expedite investigations."[5] The record 868 enforcement actions included the most ever (21) Foreign Corrupt Practices Act ("FCPA") related actions,[6] and a record 160 cases involving investment advisers and investment companies, which involved the highest number of standalone cases in this area ever (98).[7] The SEC also distributed the most money ($57 million) to whistleblowers since the program's inception.

Former Chair White said that she measured the SEC's effective enforcement, not just by the number

[1] SEC, Fiscal Year 2016 Agency Financial Report (Nov. 15, 2016) at 12, *available at* https://www.sec.gov/about/secpar/secafr2016.pdf.
[2] *Id.* at 16.
[3] *Id.*
[4] *Id.*
[5] Press Release 2016-212, SEC, SEC Announces Enforcement Results for FY 2016 (Oct. 11, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-212.html.
[6] *Id.*
[7] *Id.*

of actions, but by "[t]he quality and breadth of [those] actions"[8] Consistent with this view, FY 2016 saw several "first-of-their-kind" enforcement actions by the SEC as the SEC continued to pursue new theories of liability. In particular, the SEC brought notable "firsts" in the areas of anti-money laundering, public finance, and private equity.

The SEC has been focusing on broker-dealers' compliance with anti-money laundering requirements for some time, but last year filed the first charges against a firm *solely* for failing to file suspicious activity reports ("SAR") when the SEC deemed them appropriate.[9] Without admitting wrongdoing, a broker-dealer agreed to pay $300,000 to settle the SEC's claims that it failed to file a single SAR with regulators for more than five years, despite red flags related to its customers' high-volume liquidations of low-priced securities and trading in stocks issued by companies that were delinquent in regulatory filings or involved in questionable penny stock promotion. In some cases, the customers themselves were the subject of grand jury subpoenas received by the broker-dealer.

In the public finance area, the SEC aggressively enforced the new standards for municipal issuers and advisors created by the Dodd-Frank Act. In FY 2016, the SEC brought enforcement actions against 14 municipal underwriting firms and 71 municipal issuers and other obligated persons,[10] including the first case to enforce the fiduciary duty standard for municipal advisors created by Section 975 of Dodd-Frank[11] and the first case under the municipal advisor anti-fraud provisions of Dodd-Frank.[12] The SEC also went to trial against a municipality and one of its officers in *SEC v. City of Miami and Michael Boudreaux*, No. 1:13-cv-22600 (S.D. Fla.), when they refused to accept admissions as part of a settlement.[13]

Finally, last year, former Director of Enforcement Ceresney pointed to the SEC's activity in the private equity space as a "concrete example of how [the SEC's] actions have led to real change in the market that has benefited investors enormously."[14] For example, the SEC brought the first action against a private equity fund for allegedly acting as an unregistered broker.[15]

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[8] Mary Jo White, Chair, SEC, The Challenge of Coverage, Accountability and Deterrence in Global Enforcement, Speech at the IOSCO 39th Annual Conference (Oct. 1, 2014), *available at* https://www.sec.gov/News/Speech/Detail/Speech/1370543090864.

[9] Press Release 2016-102, SEC, Brokerage Firm Charged With Anti-Money Laundering Failures (Jun. 1, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-102.html.

[10] SEC, Fiscal Year 2016 Agency Financial Report at 18, *supra* n. 1.

[11] Press Release 2016-54, SEC, Municipal Advisor Charged for Failing to Disclose Conflict (Mar. 15, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-54.html.

[12] Press Release 2016-118, SEC, SEC: Muni Advisors Acted Deceptively With California School Districts (Jun. 13, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-118.html.

[13] *See* Andrew Ceresney, Director, Division of Enforcement, SEC, Statement on Jury's Verdict in Trial of the City of Miami and Michael Boudreaux (Sep. 14, 2016), *available at* https://www.sec.gov/news/statement/ceresney-statement-2016-09-14.html.

[14] Andrew Ceresney, Director, Division of Enforcement, SEC, Securities Enforcement Forum West 2016 Keynote Address: Private Equity Enforcement (May 12, 2016), *available at* https://www.sec.gov/news/speech/private-equity-enforcement.html.

[15] Press Release 2016-100, SEC, SEC: Private Equity Adviser Acted As Unregistered Broker (Jun. 1, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-100.html.

III. The SEC in Court: Investigate to Litigate Model

Former Chair White credited the SEC's new "'investigate to litigate'" model as producing a "trial-ready record that can be used to prevail at trial or to secure a strong settlement."[16] The impact of this model was reflected in the SEC's successful litigation record last year, where the SEC went 5-1 in six federal court trials (versus 6-0 in six trials in 2015).[17] The SEC's only loss was *SEC v. Goldstone*, where a federal jury in New Mexico found against the SEC and in favor of two former executives of Thornburg Mortgage on five counts, and was unable to reach a verdict on five others. After the trial, the SEC agreed to dismiss three of its remaining claims, including its central claim that Thornburg's accounting was fraudulent. Most recently, after preclusion motions were granted by the district court preventing the SEC from relitigating issues that had been determined against it in the first trial, the SEC dismissed the remaining charges with prejudice.[18]

The SEC continued to defend the constitutionality of its administrative courts last year. The SEC saw its position upheld in the D.C. Circuit (*Raymond J. Lucia Cos. v. SEC*, 832 F.3d 277 (D.C. Cir. 2016)),[19] and the Second (*Tilton v. SEC*, 824 F.3d 276 (2d Cir. 2016)) and Eleventh (*Hill v. SEC*, 825 F.3d 1236 (11th Cir. 2016)) Circuits followed the Seventh Circuit's 2015 ruling in *Bebo v. SEC*, 799 F.3d 765 (7th Cir. 2015), concluding that the plaintiffs' challenges had to be brought, in the first instance, during the administrative process and, therefore, the federal courts did not have subject matter jurisdiction to address their challenges. The Tenth Circuit, however, caused a circuit split by holding in *Bandimere v. SEC*, 844 F.3d 1168 (10th Cir. 2016), that the SEC administrative law judge ("ALJ") appointment process is unconstitutional, in violation of the Appointments Clause. The Tenth Circuit held that ALJs are inferior officers, and, therefore, must be appointed in accordance with the Appointments Clause—meaning, appointed by the President, the courts, or the "head of [the] department" (such as the SEC Chair), rather than hired as employees by the Office of Personnel Management.

In connection with another issue critical to the SEC's enforcement program, the agency has long pursued disgorgement of ill-gotten gains no matter the length of time that has passed since the alleged fraud. This contrasts with the agency's ability to obtain civil penalties, which are governed by the five-year statute of limitations. The applicability of this five-year statute to disgorgement, however, was put to the test last year, and will be finally resolved by the Supreme Court this year. The Eleventh Circuit in *SEC v. Graham*, 823 F.3d 1357 (11th Cir. 2016) found that a disgorgement claim by the SEC was covered by the five-year statute of limitations, but the Tenth Circuit in *Kokesh*

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[16] Mary Jo White, Chair, SEC, A New Model for SEC Enforcement: Producing Bold and Unrelenting Results, Speech at the NYU Program on Corporate Compliance and Enforcement and the NYU Pollack Center for Law and Business (Nov. 18, 2016), *available at* https://www.sec.gov/news/speech/chair-white-speech-new-york-university-111816.html#ednref26

[17] Press Release 2015-245, SEC, SEC Announces Enforcement Results for FY 2015 (Oct. 22, 2015), *available at* https://www.sec.gov/news/pressrelease/2015-245.html; Press Release 2016-212, *supra* n. 5.

[18] WilmerHale LLP, *SEC Dismisses Claims Against WilmerHale Clients* (Feb. 6, 2017) https://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=17179883752.

[19] In connection with Lucia's petition for a rehearing, the D.C. Circuit recently vacated this opinion and is scheduled to rehear the case *en banc* May 24, 2017. *See* Carmen Germaine, *DC Circ. Agrees To Rethink SEC Judges' Constitutionality*, LAW360, Feb. 16, 2017, https://www.law360.com/articles/893045/dc-circ-agrees-to-rethink-sec-judges-constitutionality.

v. SEC, 843 F.3d 1158 (10th Cir. 2016), caused a circuit split by finding that disgorgement was not covered by the five-year statute of limitations. The defendant in the Tenth Circuit case filed a petition for a writ of certiorari, which the SEC supported, and which the Supreme Court granted in January.

Finally, the SEC's efforts to pursue insider trading got a boost last year from the Supreme Court's unanimous decision in *Salman v. United States*. In *Salman*, the Court rejected the notion that some "pecuniary gain" was a required element for the SEC to establish liability of a tipper, as outlined by the Second Circuit in *United States v. Newman*, 773 F.3d 438 (2d Cir. 2014). In affirming the Ninth Circuit's ruling in *Salman*, the Court held that under *Dirks v. SEC*, 463 U.S. 646 (1983), a jury can infer that a tipper personally benefited from making a gift of confidential information to a trading relative with no requirement that the government establish that some tangible, pecuniary gain was actually received by the tipper.[20]

IV. Actions Against Individuals and Insistence on Admissions

Former Chair White recently called cases against individuals "the best form of deterrence against white collar wrongdoing" and stated that the "admissions policy [she] instituted in 2013 has begun to transform the meaning and impact of many of [the SEC's] settlements."[21]

Particularly in the area of financial reporting and accounting, the SEC has focused on bringing actions against individuals the agency believes to be culpable. In FYs 2015 and 2016, the SEC brought over 200 issuer reporting and disclosure actions and charged over 245 individuals, including individuals associated with the companies involved as well as the independent auditors.[22]

Consistent with the SEC's departure in 2013 from its longstanding no-admit, no-deny policy for civil settlements not involving criminal conduct, the SEC has continued to require admissions in certain of these cases. The SEC's stated standard for determining in which cases the agency will require such admissions is those cases "with harm to large numbers of investors or significant risk of harm to the market, where the settling party engaged in egregious conduct or obstructed Commission investigations, or where admissions would significantly enhance the deterrent message of the action."[23] While this standard allows considerable leeway in the selection of a matter to require an admission, the agency has been somewhat restrained in the application of this new policy. Since its institution, the SEC has obtained admissions from at least 77 defendants and respondents (30 individuals and 47 entities).[24] Last year, we saw admissions were required in cases involving several major financial institutions, and the SEC in the *City of Miami* case litigated when the City refused to settle on acceptable terms, which, according to former Chair White, was "primarily

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[20] *Salman v. United States*, No. 15-628, Slip Op (Dec. 6, 2016), *available at* https://www.supremecourt.gov/opinions/16pdf/15-628_m6ho.pdf.
[21] Mary Jo White, Chair, SEC, A New Model for SEC Enforcement: Producing Bold and Unrelenting Results, *supra* n. 16.
[22] *Id.*; Press Release 2016-212, *supra* n. 5.
[23] Mary Jo White, Chair, SEC, A New Model for SEC Enforcement: Producing Bold and Unrelenting Results, *supra* n. 16.
[24] *Id.*

because the City would not accept admissions."[25]

V. Continued Growth of the Whistleblower Program

The success and expansion of the SEC's whistleblower program has indisputably buttressed the SEC's enforcement efforts. Former Chair White recently credited the whistleblower program as being a "key source[] of very significant cases."[26] Awards since the beginning of the program have now surpassed the $100 million mark.[27] In FY 2016, the SEC awarded over $57 million to 13 whistleblowers, more than in all previous years combined.[28] The SEC received 4,200 tips and authorized the second highest award in the program's history, $22 million.[29]

Not only has the SEC been active in pursuing enforcement actions resulting from whistleblower tips, the SEC pursued several actions last year to enforce the anti-retaliation provisions of the Dodd-Frank Act and related rules. Last year, we saw actions alleging both actual retaliation against whistleblowers, and under Rule 21F-17(a), potentially impeding individuals from communicating with the SEC.[30] The SEC brought its first stand-alone action for retaliation,[31] and the agency has continued to pursue companies for their use of confidentiality agreements.[32] While many observers believe that the SEC has been overly aggressive in its position that these oftentimes standard confidentiality agreements impede whistleblowers, no one has yet been prepared to challenge the SEC and litigate the issue.[33]

FY 2017 looks to be another active year for the whistleblower program: four whistleblower awards, totaling $30 million, have already been announced,[34] and the Commission brought two additional

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[25] *Id.*
[26] *Id.*
[27] SEC, 2016 ANN. REPORT TO CONGRESS ON THE DODD-FRANK WHISTLEBLOWER PROGRAM (2016) at 1, 10, *available at* https://www.sec.gov/whistleblower/reportspubs/annual-reports/owb-annual-report-2016.pdf.
[28] *Id.*
[29] *Id.*
[30] Exchange Act Rule 21F-17(a) prohibits a person from taking "any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing . . . a confidentiality agreement . . . with respect to such communications."
[31] Press Release 2016-204, SEC, SEC: Casino-Gaming Company Retaliated Against Whistleblower (Sep. 29, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-204.html.
[32] Press Release 2016-157, SEC, Company Paying Penalty for Violating Key Whistleblower Protection Rule (Aug. 10, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-157.html; Press Release 2016-164, SEC, Company Punished for Severance Agreements That Removed Financial Incentives for Whistleblowing (Aug. 16, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-164.html.
[33] Matthew T. Martens, Arian M. June, and Caroline Schmidt, *Four Key SEC Whistleblower Trends – And How Companies Can Prepare for Them*, THE REVIEW OF SECURITIES & COMMODITIES REG., Vol. 49 No. 18, Oct. 19, 2016, *available at* https://www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/Documents/2016-11-02-Four-Key-SEC-Whistleblower-Trends-And-How-Companies-Can-Prepare-For-Them.pdf.
[34] Press Release 2017-1, SEC, SEC Awards $5.5 Million to Whistleblower (Jan. 6, 2017), *available at* https://www.sec.gov/news/pressrelease/2017-1.html; Press Release 2016-260, SEC, SEC Awards Nearly $1 Million to Whistleblower (Dec. 9, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-260.html; Press Release 2016-255, SEC, SEC Awards $3.5 Million to Whistleblower (Dec. 5, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-255.html; Press Release 2016-237, SEC, SEC Issues $20 Million Whistleblower Award (Nov. 14, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-

enforcement actions for alleged violations of the whistleblower protection laws in December.[35]

VI. Looking Ahead and the New Administration

The change in administration and departures of (1) Chair White, (2) Director Ceresney, (3) Chief Litigation Counsel, Matthew C. Solomon, (4) Director of Trading & Markets, Stephen Luparello, (5) Office of Compliance Inspections and Examinations Director, Marc Wyatt, and (6) Chief Operating Officer, Jeffery Heslop, may well portend significant changes for the SEC, including both its enforcement and regulatory agendas.[36] In her last public speech as SEC Chair, former Chair White expressed concern that "the new administration may weaken or even reverse many of the reforms that the Commission and our fellow financial regulators have implemented since the financial crisis."[37]

In nominating Jay Clayton to be the next SEC Chair, President Trump has selected an experienced corporate and M&A lawyer from Sullivan and Cromwell who has represented public companies as well as many of the largest Wall Street firms. Mr. Clayton will be the first securities attorney with no government experience to chair the SEC since David Ruder's appointment in 1987.[38] While President Trump's pick signals a shifting in the SEC's focus to capital formation and streamlining the regulatory framework, any change in the agency's enforcement agenda and process will likely take some time to evolve. Whatever the perspective one might have from outside the agency, a new Chair's views on the process, the remedies, and the types of cases that the agency should focus on, will be heavily influenced by the selection of a new Enforcement Director as well as by the insight and perspective the new Chair will gain in the first few months on the job.

Nevertheless, if we were to speculate, we might expect changes in several areas. We may see a departure from the "broken windows" approach to enforcement and more emphasis put on what might be called the mainstream, "core" securities fraud cases that are central to the Commission's mission. (For example, corporate disclosure and accounting, Section 5 (unregistered securities), insider trading, and Ponzi scheme cases.) And, consistent with the more generalized Republican opposition to the extraordinarily large financial penalties that have been leveled recently against firms charged with securities fraud (on the theory that such penalties punish shareholders, who too may be victimized by the company's fraud), we may see lower fines and fewer admissions being demanded generally in the enforcement program. Like other federal agencies, the SEC could also face budget cuts which may well limit its enforcement reach and capabilities.

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[35] Press Release 2016-268, SEC, Company Violated Rule Aimed at Protecting Potential Whistleblowers (Dec. 19, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-268.html; Press Release 2016-270, SEC, Company Settles Charges in Whistleblower Retaliation Case (Dec. 20, 2016), *available at* https://www.sec.gov/news/pressrelease/2016-270.html.

[36] *See* WilmerHale LLP, *Change and Continuity in Securities Regulation* (Dec. 2, 2016) https://www.wilmerhale.com/uploadedFiles/Shared_Content/Editorial/Publications/WH_Publications/Client_Alert_PDfs/2016-12-02-change-and-continuity-in-securities-regulation.PDF.

[37] Mary Jo White, Chair, SEC, The SEC after the Financial Crisis: Protecting Investors, Preserving Markets, Speech at The Economics Club of New York (Jan. 17, 2017), *available at* https://www.sec.gov/news/speech/the-sec-after-the-financial-crisis.html.

[38] Carmen Germaine, *Trump's Wall Street Ally Pick Signals Enforcement-Light SEC*, LAW360, Jan. 4, 2017, https://www.law360.com/articles/877381.

On the regulatory side, there will likely be some focus on deregulation. Former Commissioner Paul Atkins, a long proponent of deregulation, has lead President Trump's transition team for the independent financial agencies. President Trump promised to do a "'big number'" on Dodd-Frank[39] and, consistent with Vice President Pence's previous assurance to congressional Republicans that "dismantling Dodd-Frank" is a top legislative priority for the Administration,[40] the President signed executive orders directing reviews of Dodd-Frank and the Department of Labor's fiduciary duty rule.[41] Republicans have suggested that the Financial CHOICE Act, which was passed by the House Financial Services Committee on September 13, 2016 and proposed by Republican Representative Jeb Hensarling (Chair of the House committee on Financial Services), is the direction the new Administration would like to go with financial regulation (Trump's transition team previously cited this bill with approval).[42] Among other things, this proposed legislation would constrain the SEC from issuing guidance or interpretive direction without providing for notice and comment and would give Congress greater control over the agency's budget.

While the specifics of the new Administration's plan for any financial deregulation are not yet clear, and political and practical realities pose obstacles to a quick unraveling of Dodd-Frank, there are a number of likely targets. Certainly, the fiduciary duty standard for financial advisers authorized by Dodd-Frank will not be moving forward with new Administration. Another potential target is the FCPA, which President Trump has called a "'horrible law'"[43] and which, at least in some writings, Jay Clayton, the nominee to be the Chair, has raised questions about its adverse impact on business.[44] President Trump has already signed a congressional resolution to repeal the resource extraction disclosure rule,[45] and we could see a similar rollback of other controversial corporate disclosure rules, including disclosures concerning conflict minerals, pay ratios, and political spending. Indeed, even acting Chair, Michael S. Piwowar, has announced that he will not "'sit by and do nothing'" as interim leader of the SEC, and he has already directed the Staff to review regulations that might be deemed unnecessary.[46] Acting Chair Piwowar also took what might be just the first step to curb the

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[39] Glenn Thrush, *Trump Vows to Dismantle Dodd-Frank 'Disaster'*, THE NEW YORK TIMES, Jan. 30, 2017, https://www.nytimes.com/2017/01/30/us/politics/trump-dodd-frank-regulations.html.

[40] Press Release, House Financial Services Committee, 'Dismantling Dodd-Frank' a Top Priority for Administration, Congress (Jan. 26, 2017), *available at* http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=401421.

[41] Michael C. Bender and Ryan Tracy, *Trump Signs Actions to Begin Scaling Back Dodd-Frank*, THE WALL STREET JOURNAL, Feb. 3, 2017, https://www.wsj.com/articles/trump-signs-executive-actions-toward-scaling-back-dodd-frank-financial-regulation-1486148274.

[42] Press Release, House Financial Services Committee, 'Dismantling Dodd-Frank' a Top Priority for Administration, Congress, *supra* n. 40.

[43] John T. Aquino, *Trump Enforcement of Foreign Bribery Law Uncertain*, BLOOMBERG BNA, Dec. 22, 2016, https://www.bna.com/trump-enforcement-foreign-n73014449002/.

[44] Clayton served as chair of a drafting committee for a paper published in 2011 by the New York City Bar Association titled "The FCPA and Its Impact on International Business Transactions – Should Anything be Done to Minimize Consequences of the U.S.'s Unique Position on Combatting Offshore Corruption?" which argued the FCPA puts companies subject to it at a disadvantage to foreign competitors. *See* Carmen Germaine, *Trump's Wall Street Ally Pick Signals Enforcement-Light SEC*, *supra* n. 38.

[45] Catherine Traywick, *Trump Repeal of Obama SEC Regulation Signals More to Come*, BLOOMBERG, Feb. 14, 2017, https://www.bloomberg.com/politics/articles/2017-02-14/trump-repeal-of-energy-anti-corruption-rule-signals-coming-wave.

[46] Benjamin Bain, *Interim SEC Boss Goes Beyond Caretaker Role to Revisit Rules*, BLOOMBERG, Feb. 3, 2017, https://www.bloomberg.com/news/articles/2017-02-03/interim-sec-boss-goes-beyond-caretaker-role-to-

power of the Division of Enforcement by requiring that only the Director of Enforcement can authorize the commencement of any formal investigation.[47] (After the Madoff Ponzi scheme, then-Chair Mary Schapiro authorized the Division of Enforcement's associate directors to initiate formal investigations and issue subpoenas.)[48] Whether the authority to authorize such formal inquiries will ultimately be reclaimed by the full Commission, where it had traditionally been held with no delegation of authority to the staff, remains to be seen. There is, of course, uncertainty for the SEC's current rule proposals as well, notably proposed Regulation ATS-N, proposing market rules that would require additional public disclosures from certain ATS operators, as well as proposed limits on incentive-based compensation arrangements for certain financial institutions, and executive compensation rules.

The year ahead promises to be a year of uncertainty and change for the Commission and for those who must navigate the regulatory, disclosure, and enforcement climate as it evolves. As former Chair White suggested in what was her last speech while at the SEC's helm:

> The questions facing the SEC at this crossroad are the same ones that it has faced many times before, but which – as in 1975 – events have now rendered acute. First, beyond facilitating investors' access to full and fair disclosure, what is – and what should be – the role of the Commission in regulating the capital markets after the financial crisis? And, second, how does the Commission continue as a strong independent agency in the current environment?[49]

To be sure, the climate in which the SEC now operates is considerably more intense, politicized, and complicated than it was in 1975. The need, in this highly charged environment, for the agency to maintain its independence is critical. And striking the proper balance between sound regulation and tough enforcement will not be easy. The agency is still recovering from the fallout associated with the Madoff scandal and the 2008 market meltdown. For nearly the past decade that balance has been tipped in favor of ever more aggressive—some would say unforgiving—SEC enforcement, as the public skepticism and distrust of Wall Street, the markets, and corporate America generally, which has fueled the SEC's crackdown, has not abated. A new Commission, under a new Chair, will have its work cut out for it as it attempts to reflect the President's regulatory philosophy while maintaining the correct "cop on the beat" presence in our markets.

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[47] Peter J. Henning, *Signs of a Step Back in Financial Regulatory Enforcement*, THE NEW YORK TIMES, Feb. 20, 2017, https://mobile.nytimes.com/2017/02/20/business/dealbook/signs-of-a-step-back-in-financial-regulatory-enforcement.html?ref=dealbook&referer.

[48] *Id.*

[49] Mary Jo White, Chair, SEC, The SEC after the Financial Crisis: Protecting Investors, Preserving Markets, *supra* n. 37.

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