UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIR

July 10, 2015

The Honorable Elizabeth Warren
United States Senate
317 Hart Senate Office Building
Washington, DC 20510

Dear Senator Warren:

This letter is in response to your letter of June 2, 2015.

During my time as Chair of the Securities and Exchange Commission, two core goals of our broad agenda have been to strengthen enforcement and advance rules targeting the most significant issues at the heart of the financial crisis, including congressionally mandated rules. These goals are critical to the agency's mission of protecting investors, enhancing our nation's securities markets, and facilitating capital formation, and we have been very successful in advancing both of these goals.

Last fiscal year, the Commission brought a record number of enforcement cases with record monetary sanctions in wide-ranging and significant matters, and has continued to bring many impactful cases this fiscal year across the entire spectrum of the securities markets, holding wrongdoers accountable in ways unmatched by other civil law enforcement agencies. These cases were brought against corporate issuers and financial institutions, as well as responsible individuals, and included settlements under our new admissions policy. We also instituted a number of first of their kind matters, such as applying our whistleblower anti-retaliation authority and bringing actions against major credit rating, high frequency trading, and private equity firms.

Since I have been Chair, the Commission has also undertaken a number of complex and far-reaching regulatory efforts to protect investors and markets from the serious risks manifested in the financial crisis, including numerous rules mandated by the Dodd-Frank Act. In that time, for example, the Commission has adopted fundamental reforms to the operation of money market funds, completed a comprehensive overhaul of the governance and management of credit rating agencies, and put in place critical new rules for asset-backed securities. The Commission also established a wholly new regulatory regime for the advisers that guide municipalities through complex transactions and adopted enhanced protections for customer assets held at securities firms. Working with our fellow regulators, we have also implemented restrictions on proprietary trading and investments by banks and required banks to keep "skin in the game" when they structure new products. And we have executed all of these reforms while also advancing important mandated rulemakings under the JOBS Act, enhancing our regulatory framework for the asset management industry, and conducting comprehensive equity market structure and disclosure effectiveness reviews.

Your letter of June 2, 2015 primarily discusses four discrete points, on which we have previously corresponded: the timing for the adoption of one of the Dodd-Frank Act's requirements, the "pay-ratio" disclosure rule; my limited recusals under the government ethics rules; the Commission's new admissions policy; and waivers. My further responses are below.

Section 953(b) Rulemaking

Your letter discusses the Commission's proposed rule to implement section 953(b) of the Dodd-Frank Act requiring pay ratio disclosure, and inquires as to its current status. Shortly after my arrival at the SEC, I directed the staff to prepare a proposed rule for the Commission to consider; the Commission promptly approved the proposal in September 2013.[1] As I explained at our May 20, 2015 meeting,[2] we have received and reviewed over 128,000 comment letters on the proposal, some of which provided an array of cost and other data that our staff is required to comprehensively analyze in preparing a final rule. I noted in our meeting that I expected certain staff analyses to be completed in short order and to be made a part of the public comment file.[3] I also estimated that the Commission would be in a position to consider the adoption of a final rule by the fall of this year, which remains my estimate of the timing for completion of this rule. Of course, no one can guarantee in advance the adoption or proposal of any rule, let alone at a specific time. As you know, rulemaking under the Administrative Procedure Act is a complex and rigorous undertaking, and every rule proposal or adoption requires the affirmative vote of a majority of the Commissioners.

Your letter suggests that our Regulatory Flexibility Agenda covering the time period from May 1, 2015 to April 30, 2016 (submitted to OMB in March 2015),[4] is contrary to my projected timing. It is not. If asked, we would have explained that, recognizing the need for flexibility, we include in the Agenda dates one year out for nearly all rules that we anticipate we may advance at various times during the coming year. The information I provided to you on May 20 was, and is, accurate.

Recusals Required by Law

As discussed both prior to and at my confirmation hearing, and like other former SEC Chairs and former and current Commissioners, I am required by law to recuse myself from

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[1] Your letter suggests that an exchange I had with Senator Menendez at a late July 2013 Senate Banking Committee hearing referred to the estimated timing for the final adoption of the pay ratio rule "in the next month or two." But, no rule had been proposed at that time. As the transcript of the full exchange clearly reflects, I gave Senator Menendez my expectation for the timing of a proposed rule, an expectation that the Commission met in September 2013. *See* Transcript of July 30, 2013 Senate Banking Committee Hearing "Mitigating Systemic Risk in the Financial Markets through Wall Street Reforms."

[2] The date you and I met personally, first referred to in your letter at page two, was May 20.

[3] Within two weeks of our meeting, this analysis was put in the comment file (June 4, 2015), *available at* https://www.sec.gov/comments/s7-07-13/s70713-1556.pdf.

[4] *See* the Spring 2015 Reg Flex Agenda, *available at* http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235.

certain matters where I have a potential financial interest or other potential conflicts arising from my prior legal practice (for a period of two years which has now passed) or that of my spouse's law firm.[5] I have rigorously adhered to all of the applicable ethics requirements, and the limited volume and nature of those recusals have been consistent with my expectation at the time of my confirmation and have allowed me to fully function as Chair. I have participated in every rulemaking since I became Chair, and I am informed that, for the period October 1, 2013 to September 30, 2014 (my first full fiscal year as Chair), I participated in more enforcement matters than any of my fellow Commissioners.[6] I should add that when any Commissioner is recused, there are generally four other Commissioners – each Presidentially appointed and Senate confirmed – who have a duty to act in the best interest of investors and the markets and who are able to reach a just result.

The SEC's First of Its Kind Admissions Settlement Protocol

As your letter indicates, very soon after becoming Chair, I, in consultation with my fellow Commissioners and the Enforcement Division, directed Enforcement to begin requiring admissions from companies and individuals in certain cases to achieve an additional measure of public accountability through an acknowledgement of wrongdoing in SEC civil cases. This was a first of its kind policy, not only for the SEC, but for federal civil law enforcement agencies generally. As your letter acknowledges, at the time the new policy was announced, we also explicitly made clear that we would continue to settle the vast majority of our cases on a "no admit, no deny" basis. That settlement protocol was and continues to be a critical tool in an effective enforcement regime because the practice allows us to obtain significant sanctions against securities law violators, eliminates litigation risk, returns money to harmed investors more expeditiously, and conserves our limited enforcement resources for other matters.

Our record implementing the new admissions policy has been strong and the protocol continues to evolve and grow. From the time we instituted the new policy, the Commission has obtained admissions in 26 matters, encompassing 15 individuals and 25 entities, and those admissions are generally of both the facts involved and of the wrongdoing committed under federal law.[7] These include admissions from major financial institutions, including JPMorgan Chase, Bank of America, Credit Suisse, Wells Fargo Advisors, Oppenheimer & Co., HSBC, and Standard & Poor's, as well as individuals who perpetrated egregious frauds against investors.

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[5] These issues were fully addressed, as they are for all Commissioners, in a written ethics agreement which was publicly filed prior to my confirmation. *See* Ethics Agreement dated February 5, 2013.

[6] With respect to recusals occasioned by my spouse's firm's practice, as we conveyed to you at the end of last year in response to this question, there were approximately ten such recusals for the period April 2013 to September 2014, out of the more than a thousand enforcement matters on which I functioned (less than 1%). *See* Responses to your Questions for the Record from the September 9, 2014 hearing before the Senate Banking Committee. The staff informs me that the total number of such recusals for the full period of April 2013 through July 2015 is approximately twelve.

[7] In a vast majority of our admissions cases, we have required the settling party to admit to the relevant facts and acknowledge that the admitted conduct violated the federal securities laws. (We will identify for your staff the additional cases containing admissions since the date of our response to your Questions for the Record from the September 9, 2014 hearing before the Senate Banking Committee.)

And these numbers do not include the dozens of cases where we have insisted on admissions because a defendant has admitted relevant facts in a settlement with criminal or other authorities, which our work has helped facilitate.

As expected, as our policy matures, we are obtaining admissions in more cases. In the current fiscal year, we have already obtained more admissions than in the entire prior time period, and we expect this trend to continue. Going forward, I anticipate that we will, in appropriate cases, continue to press wrongdoers to publicly account for their misconduct through admissions, while still carefully balancing the need to achieve swift and certain results and preserve agency resources.

Disqualifications and Waivers

Your letter asks various questions about disqualifications and waivers under the federal securities laws. As we have discussed, disqualifications, along with the related waivers, are not enforcement remedies, but rather are separate legal and regulatory provisions governed by their own applicable standards and policies, which the Commission and the staff carefully and rigorously apply. And, while it would not be appropriate to discuss the Commission's deliberations on specific matters, in March of this year, I comprehensively outlined my views on this subject in an effort to bring more understanding and transparency in this area. I also described a number of the measures the agency has taken under my leadership to enhance our process when we assess requests for waivers and to increase the transparency of our decision making.[8]

With respect to your request for specific information on waivers that are granted, information may be found on our public website,[9] including applications requesting a waiver and a letter from the staff or a Commission order granting the request.[10] Requests for waivers, which often include nonpublic information, are not generally a matter of public record when a party submits, but then withdraws, a waiver request, or decides not to submit a request after speaking with our staff about the applicable requirements. But, as reflected in my March speech, since January 2014 for WKSI disqualifications and September 2013 for Rule 506 disqualifications, I have asked the staff to attempt to track situations when such waivers have not been granted, and your letter makes reference to the related data provided in the speech. Since those dates, we are aware of seven WKSI disqualifications and 19 Rule 506 disqualifications when waivers either

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[8] *See* Chair Mary Jo White, Remarks at the Corporate Counsel Institute, Georgetown University, "Understanding Disqualifications, Exemptions and Waivers Under the Federal Securities Laws" (March 12, 2015), *available at* http://www.sec.gov/news/speech/031215-spch-cmjw.html.

[9] *See e.g.*, http://www.sec.gov/divisions/corpfin/cf-noaction.shtml#405 (Well-Known Seasoned Issuers); http://www.sec.gov/divisions/corpfin/cf-noaction.shtml#regd506d (Rule 506); and http://www.sec.gov/rules/icreleases.shtml#ineligibledisqfirm (Investment Company Act Section 9(c)). Applications under Section 9(c) are filed by the companies on EDGAR.

[10] Your letter references waivers granted in connection with the recent foreign currency actions brought by the Department of Justice and other regulators. While, as you note, the WKSI and Rule 506 waivers were granted by majority vote of the Commission, also please note that all of the Investment Company Act Section 9(c) waivers in these matters were unanimously granted by the Commission.

have not been requested or not granted. Not reflected in these numbers are the occasions on which parties independently evaluate the applicable standards and determine that they would not meet the requirements and as a result never request a waiver or approach our staff.

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With respect to your comments about two of the Commission's unanimously adopted rulemakings (Regulation A+ and Asset-Backed Securities), the Commission's discussion of the points you raise is set forth in the adopting releases.[11] I have previously responded to your questions with regard to whether the Commission should propose rules to require mandatory disclosure of political contributions, including at our May 20 meeting.[12] And, as you may be aware, there is ongoing litigation involving the specific rulemaking petition you reference, as well as Regulation A+, which will be resolved in due course.

In closing, I am proud of the agency's many important accomplishments during my tenure as SEC Chair. In that role and to best further the SEC's mission, I apply the same independent and objective approach that has guided my entire career, thoroughly analyzing the policy and legal questions to reach the conclusions I think are right. Though we may ultimately not agree on particular issues or priorities, I have always been, and continue to be, ready to engage in a constructive dialogue with you on all of the important work of the SEC.

Sincerely,

Mary Jo White
Chair

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[11] *See* Release No. 33-9741 *Amendments for Small and Additional Issues Exemptions under the Securities Act (Regulation A) at 213-230* (March 25. 2015), *available at* http://www.sec.gov/rules/final/2015/33-9741.pdf and Release No. 33-9638 *Asset-Backed Securities Disclosure and Registration* at 29 (September 24, 2014), *available at* https://www.sec.gov/rules/final/2014/33-9638.pdf. While not mandated by the Dodd-Frank Act, the Commission proposals with respect to the private ABS markets remain outstanding and, as I have indicated previously, the staff is monitoring those markets to assess further regulation. *See, e.g.,* Testimony from the Senate Banking Committee hearing held on September 9, 2014.

[12] *See also, e.g.,* February 28, 2014 response to your January 9, 2014 letter; Responses to your Questions for the Record from the September 9, 2014 hearing before the Senate Banking Committee.