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Understanding the SEC's Quorum Rule

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An important, but sometimes misunderstood, SEC procedural requirement is the SEC's **quorum rule**, which establishes the minimum number of Commissioners required for a Commission rulemaking.

Currently, only three of the five SEC Commissioner seats are filled. President Obama's nominees for the two remaining slots, Hester Peirce and Lisa Fairfax, **await Senate confirmation**. If Mses. Peirce and Fairfax have not yet been confirmed when SEC Chair Mary Jo White steps down **as planned** at the end of the Obama Administration, then a two-person Commission, comprised of Commissioners Michael Piwowar and Kara Stein, will remain.

In such a circumstance, the Commission would nevertheless have a quorum and the ability to engage in rulemaking, if both Commissioners agreed to take any action. The SEC's quorum rule provides:

A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to §200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter. (emphasis added)

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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