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Bush Win Could Thrust SEC Into Limelight In A Big Way

By JUDITH BURNS Of DOW JONES NEWSWIRES

WASHINGTON -- While it has never been an issue in the race for the White House, if Texas Gov. George W. Bush wins the election, the Securities and Exchange Commission may be thrust into the limelight.

Bush's Social Security reform plan would direct 2% of employee payroll taxes into securities and may cast the SEC in a lead role of administering the investment program.

"The SEC has the expertise in overseeing financial advisers and funds," notes former SEC general counsel James Doty, now a senior partner at Baker Botts LLP. "They have a real role to play."

Doty declined to comment on his own role should Bush be elected. But the former SEC attorney and friend of the Texas governor is frequently mentioned as a possibility to replace SEC Chairman Arthur Levitt in a Bush administration.

"It's way too early to speculate," said Doty. "I've never spoken with the Governor about it."

Doty has ties to Bush, though. His firm has represented the Bush family for many years and its partners include James Baker, former U.S. Treasury secretary and White House chief of staff to Ronald Reagan and George Bush. Doty has known Bush for about a decade, and provided legal advice on his ownership of the Texas Rangers.

When it comes to remedies for the nation's Social Security program, Vice President Al Gore advocates a different approach, one that would use savings from debt reduction to cover outlays to participants. Gore has blasted Bush's proposal, saying it will funnel $1 trillion from Social Security into risky, private accounts.

Assuming Congress adopts Bush-style reforms, Doty said investment funds may need to be pooled at first so expenses don't take too big a bite from individual accounts. Bottom line, says Doty: The investment plan must be "good for the workers, good for the markets, and safe."

Social Security aside, Doty sees plenty on the SEC's plate, from reconciling differences between U.S. and international accounting standards to enhancing cooperation with other U.S. financial regulators. He said the agency also "has got to get on top" of market structure issues.

"A Bush SEC might be more like the first years of Levitt's chairmanship, and a Gore SEC might be more like the last few years," suggests Brian Borders, president of the Association of Publicly Traded Companies, who feels Levitt has taken a more hard-nosed approach of late.

No matter who wins Tuesday, the SEC is likely to have a new chairman next year. Already the long-serving SEC chair, Levitt's second term runs until 2003, but he is expected to step down well before that.

"Gore will want one of his own people in there," rather than leaving a Clinton appointee in place, Borders predicts.
James Cheek, a senior partner with the Nashville firm of Bass, Berry & Sims PLC, and Gore's choice to head the SEC before Clinton tapped Levitt in 1992, declined to comment.

"It's too soon for anybody to think they're being considered," said Cheek. He said Levitt has been a very effective chairman who has done "a great job in presenting issues" and generating widespread media coverage.

Nevertheless, Cheek thinks "there are a lot of issues left unresolved, including the whole set of market structure issues, and how financial markets will be regulated in the 21st century."

"Internet disclosure is an area where most issuers think the SEC has been way too conservative," and would like the agency to do more, agreed Borders. Most corporate executives think Web site postings should count as public disclosure, he notes, but the SEC has resisted that on grounds that not all investors have Internet access.

A central limit order book that would collect orders across various markets, and practices such as brokers paying for order flow and "internalizing" orders - filling them within the firm instead of going outside it - also haven't been resolved, said John Olson, a partner with Gibson, Dunn & Crutcher.

"There's a lot of stuff they haven't dealt with" regarding market structure, said Olson. "That's likely to occupy a lot of time for the next chairman of the SEC no matter which party occupies the White House."

Reform could be pushed by Congress, not the SEC, as Senate Banking Committee Chairman Phil Gramm, R-Texas, promises to make securities laws a top priority next year.

"Will there be an effort for securities reform regardless of the outcome of the election? Yes, because Gramm is committed to it," said Micah Green, executive vice president of the Bond Market Association.

Unfinished business could be folded into a reform bill. Congress has yet to resolve a battle to reauthorize the Commodity Futures Trading Commission and allow trading in single-stock futures, for instance, and attempts to cut securities transaction fees and raise SEC pay also stalled.

Controversy over a new SEC "fair disclosure" rule and a proposal to restrict accounting firms from providing consulting services to audit clients could cause lawmakers to revisit those issues as well.

"The accounting profession feels Arthur Levitt has become more of a command-and-control regulator," and is targeting campaign contributions to Republicans, Olson points out. But, he thinks it's a mistake to think a Gore administration wouldn't be sensitive to accounting concerns, noting that Gore's running mate, Sen. Joseph Lieberman, D-Conn., has a good track record in that regard.

If elected, Democrats say Gore may want to pick the first woman to head the SEC, such as Consuela Washington, an aide to Rep. John Dingell, D-Mich., the ranking Democrat on the House Commerce Committee, or Colleen Mahoney, a Skadden, Arps partner and former SEC deputy enforcement division director who is married to Thurgood Marshall, Jr., a senior Gore staffer.

Bush, in turn, might look to Mary Schapiro, a former SEC commissioner and CFTC chairman, now president of NASD Regulation Inc., or former CFTC chair Wendy Gramm. Although Gramm's name raises some eyebrows since her husband chairs the Senate committee that oversees the SEC, Doty said he sees no reason why marriage should be "a legal disability" for any choice. Of course, Republicans say the issue could be moot if Bush is elected and taps Gramm as his Treasury secretary,
Observers in both parties agree the SEC isn't foremost on either candidate's mind for now. And, typically, the top job at the agency doesn't go to a securities lawyer, but Wall Street executives who have been big campaign fund raisers, as John Shad was for Reagan and Levitt was for Clinton.

When it comes to figuring out who'll head the SEC, "the early speculation almost always turns out to be incorrect," says Olson.

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