Regulatory Alert

Regulatory Insights

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Election results and regulatory challenges

Key points

- Election Day may have come and gone, but the dust has yet to settle. A change in the White House could shift regulatory attention toward more rigorous supervision and enforcement activity, particularly with regard to consumer protections. Control of the Senate will impact the ability of any White House to successfully implement legislative change in the financial services industry.
- At the same time, Congress and regulators will continue efforts to mitigate the economic impacts from COVID-19 on consumers and businesses well into 2021, prolonging regulatory and public focus on stimulus funding, emergency credit facilities and programs, and consumer/investor protections.
- Recognizing the significant operational shifts required by efforts to contain COVID-19, regulatory attention is returning to core risk areas of change management, enterprise risk management, operational resilience and cybersecurity, and compliance risk.
- Attention toward environmental, social, and governance (ESG) considerations, and in particular climate change, is currently being driven by economic and industry pressures. A unified election swing away from the status quo in the White House and Senate (depending on the margins) could increase regulatory participation in this area significantly, including policy and regulatory requirements.

KPMG Regulatory Insights encourages you to watch for the release of our Ten Key Regulatory Challenges of 2021 in the next few weeks. Expanding on this Regulatory Alert, the POV will frame the regulatory challenges as we move into 2021, offer insights on associated regulatory pressures, and outline key actions that proactive firms might consider to better address those challenges.

With the passing of Election Day, changes in regulatory supervision, enforcement, and public policy in financial services will be largely dependent on control of the White House in combination with control of Congress. Majority control of the House of Representatives is not anticipated to be at issue, though uncertainties about the final Senate majority have at least the potential to linger into January 2021. Control of the Senate will impact the ability of any White House to successfully implement legislative change. A change in the White House may refocus regulatory attention toward more rigorous supervision and enforcement activity, particularly with regard to consumer protections.

For financial services, KPMG LLP (KPMG) expects that efforts to mitigate the economic impacts from COVID-19 will dominate the regulatory conversation throughout 2021. Regulatory and public attention will be focused on the role of financial services companies in delivering stimulus funding, emergency credit facilities and programs, and consumer/investor protections. However, regulators will also focus on the ability of financial services companies to maintain operational resiliency and strong risk management as they adapt to new operating models and changing consumer preferences driven, and even accelerated, by efforts to contain the COVID-19 health crisis. Policies and priorities set out by the White

House will add further dimension to the discussion with the potential for added scrutiny and/or change, especially in areas related to Climate/ESG issues, consumer protections, and regulatory authorities, which have been evolving throughout 2020.

KPMG "Key 10". KPMG has identified the following 10 key areas of regulatory challenge for 2021 based on developments within the financial services industry over the past year.

— **Change management** – Volatility in the markets will continue into 2021. Regulators will look for documented and sound change management amidst continued remote workforces, use of flexible operating models, expanded digital platforms, distributions of stimulus-related funds, and implementation of temporary regulatory rulemakings.

— **Credit risk and LIBOR change** – The credit sector will be pressured by persistent low interest rates, allowance for loan and lease losses (ALLL), the Current Expected Credit Losses (CECL) methodology, concentrations, exposures, and the LIBOR transition. Credit quality will be tested by ongoing economic pressures.

— **Climate and ESG** – ESG is actively promoted by the industry and increasingly seen as a driver of value, risk and opportunity. Regulators will start to expect financial services companies to identify, refine, test, and monitor climate-specific and broader ESG risks across the risk disciplines.

— **Core risk management** – The rapid and significant response to COVID-19 demanded immediate attention in 2020, but a strong risk management foundation and culture, with an effective three lines of defense, will be tested in 2021 and fundamental to regulatory supervision and enforcement.

— **Operational resiliency and cybersecurity** – The expanded cyber and vulnerability threats resulting from increased use of digital platforms will require ongoing demonstration of resiliency and control effectiveness. Regulators will focus on protection of proprietary data, customer data, core processes, and exposure from third parties.

— **Compliance risk** – Stimulus-related funds in such areas as the Paycheck Protection Program (PPP), emergency credit facilities, forbearance, and accommodations must be shown to have been allocated with both efficacy to the programs and underlying regulations, as well as to quality in the underlying files and processes.

— **Fraud and financial crime** – Fraud, insider threats, conflicts of interest, Know-Your-Customer (KYC), Customer Due Diligence (CDD), sanctions, and anti-money laundering (AML) compliance are all areas of expanded risk based on operational and financial responses to COVID-19 and the resulting economic cycle.

— **Customer protections** – Amidst continued changes to Community Reinvestment Act (CRA) compliance, and heightened attention to customer/investor protections in stimulus fund compliance, financial crimes and due diligence, regulatory attention will refocus on such areas as unfair, deceptive, or abusive acts or practices (UDAP/UDAAP), fair access, servicing and lending, anti-trust, privacy, wealth management, and Best Interest/fiduciary regulations.

— **Payments** – Digital transformation has accelerated with significant impact on payments channels and platforms. Regulatory attention will focus on security, protections, and expanded business models, including digital and crypto currencies.

— **Expanding regulatory authority** – Growing numbers of mergers, alliances and partnerships, coupled with the realization amongst many nonbanks and fintechs that their core functions are financial services, will expand licensing and chartering activity, with a potential divergence between federal and state authorities.

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