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Impact of the Trump Administration on financial services – The opening stretch

President Trump's campaign platform of regulatory reform notably included a promise to "dismantle and replace" the Dodd-Frank Act¹ in order to reduce regulatory burden and increase credit availability. There is no doubt that the industry is stronger and safer today, in large part due to the Dodd-Frank Act changes to strengthen capital, liquidity, risk and compliance management systems, disclosures, and interagency coordination. In fact, many companies have invested heavily to implement these changes and would like to keep a number of them in place. The challenge is to find a balance between regulation, risk, and profitability. The myriad of rules and intense on-site supervision that have emerged post-crisis have contributed to a regulatory environment, both in the United States and globally, that many firms—and presumably the new Administration—find to be unduly complex, extremely costly, intrusive, and sometimes inconsistent.

Along with the Republican-controlled Congress, the early efforts of the Trump Administration have focused on issues outside of financial services, including immigration, trade, healthcare, and taxes. Nonetheless, through presidential actions, revised regulatory agendas, and proposed legislation, they have begun, on multiple fronts, to carry out a policy of burden reduction for financial services. The following briefly outlines the more significant steps taken by the Trump Administration and Congress since late January to facilitate this end.

Presidential actions

President Trump has signed a number of Executive Orders and Presidential Memoranda that reflect a move toward reduced regulation. Collectively, these presidential actions:

- Require Treasury Secretary Mnuchin, by October 2017, to assess and report on:

- The process used by the Financial Stability Oversight Council (FSOC) to designate nonbank financial companies as systemically important financial institutions (SIFIs), including whether such designations will shield the companies from bankruptcy, and
- Whether the Orderly Liquidation Authority (OLA) encourages excessive risk-taking, creates moral hazard, or exposes taxpayers

¹ The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), P.L. 111-203, July 21, 2010.



to potential liability, in addition to whether a superior approach to resolution would be possible through a new chapter to the U.S. Bankruptcy Code.

The Treasury Secretary is further instructed to refrain from any new nonbank-SIFI designations or use of the OLA during this time. (These directives will likely hold back certain anticipated actions, including designation of large asset management firms as nonbank SIFIs and the release of final capital rules for insurance companies that are currently designated as nonbank SIFIs.)

- Require the head of each federal agency to designate a Regulatory Reform Officer to oversee the implementation of regulatory reform initiatives and policies and to establish a Regulatory Reform Task Force to evaluate existing regulations and recommend repeal, replacement, or modification of regulations that inhibit the administration's pro-growth policies. (Though they are not directly covered by this directive, there have been very few proposed or final rulemakings issued by the financial services regulators in 2017.)
- Introduce high-level "[Core Principles](#)"² for regulating the financial system and require Treasury Secretary Mnuchin to review how the current financial regulatory system supports these principles. The Treasury Secretary is directed to consult with the heads of the member agencies of the FSOC in a review of current "laws, treaties, regulations, guidance, reporting and recordkeeping requirements, and other Government policies" and to report to the

President within 120 days (a due date of June 3, 2017). (Recent news reports suggest the Treasury report may be released after the due date and in multiple instalments.)

- Require executive departments and agencies³ to identify at least two existing regulations to be repealed for each new regulation they "publicly propose for notice and comment or otherwise promulgate." The order also requires the placement of cost caps to limit the total incremental cost of all new regulations finalized during fiscal year 2017 to no greater than zero.
- Direct the Department of Labor (DOL) to review its Fiduciary Duty Rule to determine if it "may adversely affect the ability of Americans to gain access to retirement information and financial advice." In response, DOL issued a final rule extending the initial applicability date of the rule. It became effective June 9, 2017. Requirements of the rule that are scheduled to phase-in on January 1, 2018 are not affected.
- The DOL intends to complete the required review prior to January 1, 2018, and at that time to decide whether to make or propose additional changes to the rule or associated exemptions. Although some industry participants report having prepared to meet the original April 2017 applicability date, there is support for a further delay based on the potential for investor confusion since DOL may yet decide to change or repeal the rule.

² The "Core Principles" are to "(a) empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth; (b) prevent taxpayer-funded bailouts; (c) foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry; (d) enable American companies to be competitive with foreign firms in domestic and foreign markets; (e) advance American interests in international financial regulatory negotiations and meetings; (f) make regulation efficient, effective, and appropriately tailored; and (g) restore public accountability within Federal

financial regulatory agencies and rationalize the Federal financial regulatory framework."

³ Executive departments and agencies are headed by members of the President's Cabinet and report directly to the President. The Department of the Treasury and the Department of Labor are among these executive agencies. Independent agencies operating within the Executive Branch of government and are subject to Congressional oversight but do not report directly to the President. The Federal Reserve Board, Federal Deposit Insurance Corporation, Securities and Exchange Commission, Commodity Futures Trading Commission, Federal Trade Commission, and the National Credit Union Administration are among the independent agencies.

Regulatory agency leadership and revised agendas

The appointment of agency leads for the federal financial services regulatory agencies will influence the implementation and enforcement of existing regulations as well as the policy agendas for future rulemakings. Quite a few positions remain unfilled, delaying implementation of the Trump Administration's regulatory relief policies. At present, the leadership of the financial services regulatory agencies is as follows:

- **Treasury:** Steve Mnuchin was confirmed as Treasury Secretary in February 2017.
- **Federal Reserve:** Janet Yellen's term as Chair of the Federal Reserve Board ends in February 2018. President Trump, however, recently said that he would consider re-appointing her. Stanley Fischer's term as Vice Chair ends in June 2018. Daniel Tarullo, who was not appointed but had effectively served in the role of Vice Chairman of Supervision (created by the Dodd-Frank Act), stepped down in early April. There are now three vacant positions on the seven-person board, including the position of Vice Chairman for Supervision. The Vice Chairman for Supervision wields major influence on the development of financial regulatory policy, including the relationship between U.S. and global rules and standards.
- **OCC:** Comptroller Thomas Curry's term expired April 9, 2017, and he stepped down on May 5. Keith A. Noreika, a financial services attorney who also served as an adviser to the Trump Administration's Transition Team on regulatory agency issues, has been appointed to serve as the First Deputy Comptroller, a position that does not require Senate confirmation. He will serve as the Acting Comptroller until a nominee can be confirmed by the Senate.
- **FDIC:** Martin Gruenberg's term as Chairman of the Federal Deposit Insurance Corporation (FDIC) ends in November 2017. FDIC Vice Chairman Thomas Hoenig's term expires in April 2018.
- **SEC:** The Senate confirmed Jay Clayton in early May to serve as Chair of the Securities and Exchange Commission (SEC). Two additional positions remain open on the

Commission and a third position will open when Commissioner Stein's term expires in June 2017.

- **CFTC:** Current Acting Chair J. Christopher Giancarlo has been nominated to serve as Chairman of the Commodity Futures Trading Commission (CFTC). Three additional positions remain open on the Commission.
- **CFPB:** Consumer Financial Protection Bureau (CFPB) Director Richard Cordray's term expires in July 2018.

It is unclear how changes in leadership at the regulatory agencies will change U.S. participation in the international standards-setting bodies, such as the Bank for International Settlements' Basel Committee on Banking Supervision, or adoption of international rules in light of the new financial services "Core Principles" and the Trump Administration's "America First" stance. Some countries, as seen in the UK with Brexit, may also put the international accords at risk of splintering. The potential for global regulatory inconsistency and geopolitical disruptions will remain high.

Legislative proposals – Dodd-Frank Act/Financial CHOICE Act

As a longer-term approach to reducing regulatory burden in the financial services industry, the Trump Administration and Congressional Republicans are seeking legislative solutions. Full repeal of the Dodd-Frank Act continues to be thought unlikely though the industry would appear to favor a partial repeal or revision of certain areas of the law, some of which are outlined by the Financial CHOICE Act.

Jeb Hensarling, Chairman of the House Committee on Financial Services (Committee), introduced the Financial CHOICE Act of 2017, or H.R. 10, in April 2017. The bill is a revised version of legislation previously introduced last year. It passed the full House of Representatives on June 8, 2017 but is widely expected to struggle in the Senate, increasing the potential for modifications. The Senate is reportedly working on its own package of financial regulatory reforms.

There is notable overlap between the Financial CHOICE Act of 2017 and many of the presidential actions. Treasury Secretary Mnuchin has stated that he "welcome[s] the reintroduction of the CHOICE Act," and it will be interesting to see

how his report on financial regulatory reform aligns with H.R. 10. Legislative solutions are frequently long, arduous journeys that in the end can be abandoned for lack of support or changed significantly through trade-offs and compromise.

While H.R. 10 is unlikely to pass out of the Congress exactly in its current form, it does give some insight into the reforms to the Dodd-Frank Act and other areas of law that may reshape financial services regulation. As passed by the House, the provisions of the bill would include changes to the rulemaking process for all federal financial agencies, including requiring cost-benefit analyses, as well as:

- Repeal of the Dodd-Frank Act Volcker Rule. (Separate legislation to introduce Glass-Steagall-like requirements is currently working through Congress and, if passed, would negate the need for this provision);
- Repeal of the DOL Fiduciary Rule. (This would override any DOL action taken in response to the February 3, 2017 Presidential Memorandum);
- Repeal of the Orderly Liquidation Authority in the Dodd-Frank Act and replacement of the provisions with a new chapter in the U.S. Bankruptcy Code that would specifically address the failure of financial services companies; living will submissions would be relaxed, becoming a bi-annual requirement;
- Repeal of the Office of Financial Research;
- Elimination of the FSOC authority to designate nonbank SIFIs. (This will affect primarily insurance companies, asset management companies under consideration, and financial market utilities);
- Exemption from the capital/liquidity/stress testing/resolution and recovery requirements for qualifying banking organizations. (This provision will affect primarily small- and medium-sized institutions that are more likely to attain the threshold percentage. Separately, the Federal Reserve has begun to

exercise a lighter touch on capital and liquidity stress testing for certain larger institution not classified as global SIFIs by eliminating qualitative requirements in CCAR stress testing. The industry generally supports raising SIFI levels well above the \$50 billion thresholds and for lighter capital requirements);

- Changes in the governance and funding of the Federal Housing Finance Agency, the FDIC, the OCC, the National Credit Union Administration, and nonmonetary functions of the Federal Reserve;
- Modifications to the enforcement authority of the SEC that would allow defendants in SEC administrative proceedings a right of removal to federal court and prohibit “rulemaking by enforcement”; an additional provision would require a study of the SEC’s enforcement policies and practices; and
- Significant modification to the structure and authorities of the CFPB, such as:
 - Establishing the CFPB as an Independent Agency with a sole Director appointed by the President and confirmed by the Senate.⁴ The Deputy Director would be appointed by the President;
 - Subjecting the agency to the appropriations process;
 - Eliminating its supervisory/examination authority for banks and nonbanks;
 - Eliminating its rulemaking and enforcement authority for UDAAP (unfair, deceptive, or abusive acts or practices). The federal prudential regulators would be required to promulgate regulations under Section 5 of the FTC Act (unfair and deceptive acts or practices, or UDAP);
 - Eliminating all authorities with regard to small dollar credit;
 - Limiting the agency’s authority to enforce the enumerated consumer protection laws

⁴ The text of H.R. 10 as of April 29, 2017 would amend the Dodd-Frank Act to state that the CFPB is an independent agency and to remove the provision that permitted the President to remove the Director for inefficiency, neglect of duty, or malfeasance in office. In

contrast, the Executive Summary of H.R. 10 prepared by the House Committee on Financial Services states that H.R. 10 would “restructure the agency as an Executive Branch agency with a single director removable by the President at will.”

to actions against nonbanks and insured depository institutions and credit unions with total assets in excess of \$10 billion; and

- Prohibiting publication of the Consumer Complaints Database.

Legislative proposals – 21st Century Glass-Steagall

Separate from Dodd-Frank Act reform, some legislators favor the reintroduction of the Banking Act of 1933 (commonly referred to as Glass-Steagall), which prohibited a single firm from engaging in both commercial and investment banking activities. In April 2017, a bipartisan group of senators, led by Elizabeth Warren and John McCain, introduced the 21st Century Glass-Steagall Act, a “modern version” of Glass-Steagall. This legislation would prohibit financial holding companies, including potentially the U.S. intermediate holding companies of foreign banking organizations, from engaging in certain financial activities and separate FDIC-insured banks offering savings and checking accounts from “riskier” financial services, such as investment banking, insurance, swaps dealing, and hedge fund and private equity activities. The bill is intended to make “Too Big to Fail” institutions (generally, SIFIs) smaller and safer, minimizing the likelihood of a government bailout, and to protect depositors by eliminating banks’ conflict of interest arising from proprietary trading profits, considered by many to be insufficiently addressed by the Volcker Rule.

The chances for passage of this legislation are unclear despite support from President Trump during the campaign, Treasury Secretary Steve Mnuchin, National Economic Council Director Gary Cohn, and FDIC Vice Chairman Thomas Hoenig, who has separately released his vision for a similar regulatory framework.

Industry response/closing thoughts

The early, albeit temporary, actions of the Trump Administration are consistent with campaign statements that called for a reduction in regulatory burden for financial services companies along with policies to increase credit availability. At that time, the details were limited and they remain so, though the proposed CHOICE Act coupled with the presidential actions serve as the

best indicator of the administration’s preferences for the future regulatory landscape. Ultimately, the choice of regulatory agency leads and additional board/commission members will further influence and solidify the Administration’s intended change.

Due in part to interest rate changes and the Administration’s relaxed policy stance, financial services companies should experience improved financial results in the near term; tax reforms, which are expected to contain significant reductions in corporate tax rates, would reinforce and enhance these results. In anticipation, many companies are beginning to re-evaluate their operating strategies, reinvest in the business, and redeploy excess capital and assets toward credit availability and business growth, product realignment, systems enhancements, and other technology and infrastructure investments. These efforts include repositioning regulatory strategies in certain areas, increasing cybersecurity and privacy protections, reducing compliance costs, improving customer service, enhancing conduct and culture, and focusing on known supervisory priorities.

Mindful that changes to the regulatory environment are certain, flexibility and responsiveness in both systems and compliance programs will be critical to accommodating changes with minimal disruption. Many emerging technologies and digital solutions can facilitate integration and automation, which should lead to reduced costs, improved efficiency and effectiveness, and greater responsiveness to change –no matter the direction. Financial services companies should anticipate that the expected economic and regulatory policy changes may prompt developments and additional changes to the industry, including increased competition from financial technology firms; new technology applications for products, services, and operations (both client-facing and back office); and consolidation through mergers and acquisitions activity. A lull in the pace of new regulation and the potential for a reduction in regulatory demands creates opportunity to invest time and resources toward compliance and process improvements.

As we noted just after the election, “financial institutions should continue efforts to improve operational effectiveness and efficiency; strengthen oversight, compliance, and risk

management; maintain a customer-oriented focus; and meet the growing challenge from innovators and new market entrants. There are many drivers of change impacting the financial services industry and they will remain relevant independent of, and throughout, any regulatory changes currently being contemplated." Many of these changes will also require technology solutions, making it more important now to also have an effective program for managing regulatory change.

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