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First take
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Ten key points from Donald Trump's electoral victory

President-elect Trump and his supporters have publicly called for the overhaul of Dodd-Frank and related regulations enacted since the financial crisis, while Democrats have been steadfast in maintaining one of the major accomplishments of the Obama presidency. We have watched the incoming administration's statements and actions with interest, along with the hardened views of congressional leaders and the complex myriad of financial regulations that are in place or still to come. As a result, we have been cautious to publish our specific views or predictions – the safest prediction is obviously to say things are unpredictable.

However, after much debate and discussion with clients and contacts in Washington, we have decided to follow the advice of Peter Thiel and take the incoming Trump administration more seriously than literally. In a serious sense, the Trump administration would try to (a) reduce the "excess" regulatory burden on financial institutions and the financial system, (b) improve the ability of banks to lend more freely and spur economic growth, (c) enhance the global competitiveness of the US financial services sector to create jobs in the US, (d) protect the economy from systemic risk and bailouts, and (e) most importantly, not let a long and protracted fight over reforming the financial sector (which most average Americans don't prioritize or understand) get in the way of agenda items espoused on the campaign such as healthcare, immigration, trade, infrastructure, and economic growth.

Assuming this serious versus literal thesis holds in the new administration, then our view is that the administration's biggest bang for the buck is to focus on changing the regulators rather than the regulations (that are already in place). While Dodd-Frank and its related rulemakings have been difficult and painful to adopt and implement, the medicine has largely already been taken, especially by the largest US financial institutions. Despite the pain (or perhaps because of it), the global competitiveness of the US financial services sector has never been stronger – the rest of the world (particularly Europe's banks) have been slow to address the necessary balance sheet, structural, and business model transformations to compete in the post-crisis regulatory world. Therefore, the real issues for most large US banks subject to Dodd-Frank are the ever increasing demands of regulators, very narrow or non-transparent interpretations of complex and at times contradictory provisions, and punitive enforcement actions. These areas are where most of the "excess" pain resides, and where the Trump administration can impact financial regulation the most.

Given this backdrop, and with the caveat that "unpredictable" is the norm, we set forth the following ten predictions:

1. **Dodd-Frank will not be repealed.** Mr. Trump will be President and Republicans will still have a Congressional majority, but Democratic Senators can derail changes they oppose through filibusters. Over the last two years, Senate Majority Leader McConnell (R-KY) could not muster the support from Democrats to attain the 60 votes needed to overcome many filibusters, a task that will be even more daunting with a now smaller Republican majority (assuming Senator McConnell does not change the filibuster rules). In addition, Senator Elizabeth Warren (D-MA) and an emboldened Senator Bernie Sanders (I-VT) will make it even harder for Senator McConnell by using their bully pulpits to implore Democrats to hold the line against changes to Dodd-Frank. As a result, repealing Dodd-Frank entirely or other big ticket items on the Republican wish list, such as dismantling the Consumer Financial Protection Bureau (CFPB) or Financial Stability Oversight Council (FSOC), will have to wait until Senate Republicans have the opportunity to pick up more seats in the 2018 elections (when Democrats will have to defend 25 of the 33 seats being contested).

2. **However, some targeted Dodd-Frank rollback by Congress will occur.** Dealmaking will lead to targeted changes to Dodd-Frank where some Democrats can agree with Republicans. Several moderate Democrats on the Senate Banking Committee are up for reelection in traditionally Republican states in 2018, so they will be particularly motivated to compromise.[1] The area of most likely consensus is raising the $50 billion asset threshold for automatically designating banks as systemically important. However, the Federal Reserve (Fed), Federal Deposit Insurance Corporation (FDIC), and other regulators have already significantly eased requirements for banks below $100 billion in assets, so this change would have limited impact. While the Dodd-Frank alternative bill introduced by Financial Services Chairman Jeb Hensarling (R-TX) earlier this year has little chance of becoming law, it does gives us insight into what additional items Republicans may prioritize for consensus. One likely item is the Volcker Rule's limits on proprietary trading[2] because many deem it as overly intrusive on banks' businesses, and moderates have even questioned its utility. Many have also questioned its adverse impact on market liquidity and its wide net that accidentally captures certain asset managers. Another area is the CFPB's leadership structure, which has become vulnerable since a federal court recently ruled the CFPB's structure unconstitutional because its single director can only be removed "for cause" from his five-year term. This issue will likely be decided on appeal, but in the meantime the Republican Congress will be emboldened to seek legislative change toward a commission structure – an effort that will receive especially significant support if the CFPB's appeal fails.

3. **President-elect Trump's broadest impact on financial regulation will come from his appointments to the federal agencies.** The Trump administration essentially hit the lottery with respect to appointments because of existing vacancies and several key Obama-appointee terms that happen to expire during the new administration's first year.[3] President-elect Trump will quickly nominate a new Treasury Secretary, as is customary, but Mr. Trump will also be able to nominate new leaders of the Office of the Comptroller of the Currency (OCC) and FDIC whose terms expire during his first year in office.[4] President-elect Trump will also be able to fill two Fed governor vacancies in 2017, including the Vice-Chair of Supervision seat mandated by Dodd-Frank (which has never been filled), and then will be able to appoint a new Chair and Vice-Chair in 2018. It is not clear how Fed Governor Daniel Tarullo, who has acted as the de facto head of bank supervision and driven post-crisis regulations, would respond to the Vice-Chair of Supervision seat being filled. Though some speculate he would leave his post, it seems as likely to us that he could choose to stay in order to defend his agenda and not give Mr. Trump another vacancy to fill. Outside of banking supervision, the Chairs of the Securities and Exchange Commission (SEC) and of the Commodity Futures Trading Commission (CFTC) traditionally step down when the administration changes (SEC Chair Mary Jo White has already announced she would), so Mr. Trump's nominations will also flip these agencies to Republican control in 2017.

   The overall impact of these changes in leadership at the regulatory agencies will be felt most by those banks that are not among the US's largest. These smaller institutions will feel continued relaxation of supervisory requirements. For the largest banks, change will take more time as new leaders' views filter through the bureaucracy. As change sets in, the regulatory bar will cease rising and there will be some relaxation of supervisory requirements and fewer enforcement actions.

4. **Stress testing and resolution expectations will continue easing for smaller banks and stop rising for the largest ones.** Two of the most significant post-crisis regulatory processes – Comprehensive Capital Analysis and Review (CCAR) stress testing and resolution planning – are unlikely to be relaxed for the largest banks. It is important to recall that both Democrats and Republicans have pressured the Fed and FDIC for years to address possible big bank failures as part of the resolution planning process, which resulted in

the Fed and FDIC deeming five of the eight largest US banks' 2015 plans "not credible" last year.[5]

For smaller banks, we expect the easing trend to accelerate. This trend became most clear when the Fed proposed a rule earlier this year providing that it will no longer reject smaller banks' capital plans based on CCAR's qualitative grounds – a rule that we expect to be finalized in either the Obama or Trump administration.[6] Similarly, the Fed and FDIC gave smaller banks a one year delay for their next resolution plan filing, which is now due in December 2017 rather than next month.[7]

5. **Priority Fed rulemakings will proceed, but other rulemakings are far less likely.** We expect the Fed's rulemaking agenda for its priority rules to move forward as planned this year. Most importantly, we expect the Fed to finalize both its Total Loss-Absorbing Capacity[8] and Single Counterparty Credit Limits[9] proposed rulemakings by January due to the significant progress that has already been made in advancing them and because of their clear importance toward reducing systemic risk. However, it is no longer clear that the Fed will move forward with considered changes to incorporate a new capital surcharge into CCAR for the largest banks.[10] Other outstanding proposed rules are also unlikely to be a priority under a Trump administration, especially the interagency proposal to limit executive bonuses through deferrals and clawbacks[11] and the Fed's recently proposed capital rules for Fed-supervised insurers.[12]

6. **The SEC will likely complete its derivatives rules this year.** Although the CFTC has already completed the vast majority of its derivatives rulemakings,[13] the SEC has lagged behind on its security-based swaps agenda. The SEC recently started to catch up by finalizing its business conduct standards and the bulk of its reporting rules,[14] but the remaining rules (i.e., recordkeeping; statutory disqualification; and capital, margin, and segregation) have only been proposed.[15] These rules are a priority for Chair White to complete before she steps down, and we believe she will most likely be successful. The remaining rules are fairly uncontroversial because they (a) are necessary in light of the CFTC's rulemakings, and (b) will come out generally consistent with similar CFTC requirements in order to avoid additional compliance obligations for market participants subject to both regimes.

7. **Asset management rules will be hard for the SEC to complete.** The SEC has had an ongoing agenda to increase regulation of asset managers, but now faces great difficulty in completing the agenda since it will be an unlikely priority for Trump-appointed commissioners.[16] The SEC finalized rules to increase data reporting and liquidity management requirements for asset managers earlier this year,[17] but outstanding proposed rules related to the use of leverage[18] and business continuity planning[19] are unlikely to be finalized any time soon. Even before the election, it was uncertain whether these rules could be finalized this year, but now Republican Commissioner Michael Piwowar may be incented to deny Chair White a quorum if she seeks to advance them (he voted against the leverage rule proposal, and is one of three commissioners whose participation would be needed to finalize it). It is even more doubtful that the SEC will propose its planned rules for asset manager stress testing or for third-party compliance reviews in the foreseeable future.

8. **The DOL's fiduciary duty rule will remain intact but compliance deadlines face delay.** The core of the Department of Labor's (DOL) fiduciary duty rule[20] will likely survive the electoral changes. The industry has already made significant progress toward complying with the rule, and despite the rhetoric there is a general recognition of the importance of removing perceived conflicts of interest between financial advisers and retirement investors. In addition, President-elect Trump is unlikely to want to invite criticism that repeal of the rule would harm retirement savers. Most importantly, both President-elect Trump and the Congress are likely to receive mixed signals from industry on whether or not repealing the rule is a good idea, especially given the industry divide earlier this year over the need for a fiduciary rule in the first place. However, a Trump-controlled Department of Labor would strongly consider delay of the rule's April 10, 2017 compliance deadline.

9. **FSOC will likely shift its mission toward identifying opportunities for deregulation.** President-elect Trump will be making new appointments to the majority of FSOC's nine member agencies over his first two years in office, including appointing a new Treasury Secretary as Chair. As a result, we could see the new Treasury Secretary use FSOC's statutory requirement as a means for coordinating regulators to streamline existing regulations. Furthermore, FSOC's process for designating nonbanks as systemically important is likely to yield very different results going forward, especially when it considers de-designating nonbanks currently under its purview (such designations are reconsidered annually).[21] Finally, FSOC will almost inevitably scale back its focus on asset manager products and activities.

10. AML and sanctions regulation will stay the course. We do not expect much deregulation related to sanctions, terrorist financing, and anti-money laundering (AML). In fact, many believe President-elect Trump would reverse President Obama's moves toward easing sanctions against Iran and Cuba, but in our view such a reversal is much easier said than done.[22] Further, President-elect Trump is likely to continue the Obama administration's focus on cross-border cash and wire movement to combat terrorist financing, with a reinvigorated effort on transaction data collection. In addition, President-elect Trump is expected to be open to public-private AML partnerships and data sharing.[23]

Endnotes

1. These Senators include Jon Tester (D-MT), Heidi Heitkamp (D-ND), and Joe Donnelly (D-IN).
2. See PwC's *Regulatory brief, Volcker Shrugged* (December 2013).
3. The Senate filibuster is unlikely to be available to prevent these nominations as a result of changes made by Democrats in 2013.
4. Comptroller Curry's term expires in March 2017, and FDIC chair Martin Gruenberg's term expires in November 2017.
5. See PwC's *First take, Ten key points from Agencies' resolution plan feedback* (April 2016).
6. See PwC's *First take, Ten key points from Governor Tarullo's speech on stress testing and the Fed's NPR* (October 2016).
7. This relief was provided in order to allow smaller banks time to incorporate the agencies' feedback on their plans filed in 2015. This feedback has been outstanding for 11 months now – five months longer than feedback on their 2014 plans.
8. See PwC's *First take, Ten key points from the Fed's proposed Total Loss-Absorbing Capacity* (November 2015).
9. See PwC's *First take, Ten key points from the Fed's single-counterparty credit limits proposal* (March 2016) and PwC's *A closer look, Counterparty credit limits: do you know where your exposures are?* (October 2016).
10. See *First take* in note 6. The Fed could still complete this rulemaking because its board will remain controlled by Obama appointees.
11. See PwC's *First take, Five key points from US regulators' bonus compensation proposal* (April 2016).
12. See PwC's *First take, Ten key points from the Fed's proposed insurance regulations (*June 2016) and PwC's *First take, Five key points from Governor Tarullo's speech on insurance capital standards* (May 2016).
13. See PwC's *Regulatory brief, Derivatives: Clear road ahead for uncleared margin* (November 2015).
14. See PwC's *First take, Ten key points from the SEC's business conduct standards for swap entities* (May 2016) and PwC's *First take, Five key points from the SEC's reporting and public dissemination rule* (July 2016).
15. See PwC's *First take, Ten key points from the SEC's swap dealer registration and waiver rulemakings* (August 2015).
16. See PwC's *A closer look, Asset managers: the SEC's road ahead* (May 2015).
17. See PwC's *First take, Five key points from the SEC's final rule on fund reporting* (October 2016) and PwC's *First take, Ten key points from the SEC's liquidity risk management rule and swing pricing amendment* (October 2016).
18. See PwC's *First take, Ten key points from the SEC's proposed derivatives rule to limit leverage for registered funds* (December 2015).
19. See PwC's *First take, Five key points from the SEC's business continuity plan proposed rule for investment advisers* (July 2016).
20. See PwC's *First take, DOL fiduciary rule: Election impact and FAQs* (November 2016) and PwC's *First take, Ten key points from the DOL's fiduciary rule* (April 2016).
21. Of the four nonbanks originally designated as systemically important by the FSOC, only AIG and Prudential remain because Metlife's designation was rescinded by a district court earlier this year and GE Capital was de-designated after it spun off several operations.
22. See PwC's *Financial crimes observer, Iran sanctions and beyond: Avoiding the rising fines* (February 2016).
23. For example, FinCEN last year proposed a rule that would apply the PATRIOT Act information sharing requirements to investment advisers. See PwC's *Regulatory brief, Asset managers: AML ready?* (September 2015).

Additional information

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