The New Normal:
Potential Revisions to the Securities Law and Regulations
Under the New Administration

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Seven Securities Law and Regulatory Changes Likely To Be Considered In the New Administration
Seven Securities Laws and Regulations In the Crosshairs

1. Dodd-Frank Act: The Volcker Rule
2. Implementation of the Fiduciary Rule
3. Delegation of Enforcement Authority
4. Eliminating the Consolidated Audit Trail
5. Disclosure of Pay Ratios
6. Disclosure of Political Contributions
7. Elimination of Deference
1) Dodd-Frank: The Volcker Rule

» **Volcker Rule:** Named after former Federal Reserve Chair, Paul Volcker. Rule was enacted in 2010 as part of Dodd-Frank and adopted in December 2013.

» Intended to limit proprietary trading by banks. It attempts to distinguish between speculation and investment, and limits banks ability to use their own accounts for risky investments.

» Goal was to reign in banks’ desires to magnify earnings using derivatives, exotic mortgage-based investments.

» The nominee for the Secretary of the Treasury – Steven Mnuchin - has publicly advocated for “stripping back” elements of Dodd-Frank, including the Volcker Rule.

» But during his confirmation hearing, he stated “I do support the Volcker Rule.” Saying there need to be clear lines between what was and was not proprietary trading – banks using their own funds.
2) Implementation of the Fiduciary Rule

- Department of Labor’s Fiduciary Rule finalized in April 2016 and scheduled to be phased in on April 10, 2017; full compliance deadlines April 2018.
- Rule requires advisors to act in the best interests of their clients and to put clients’ interests above their own.
- It leaves no room for advisors to conceal any potential conflict of interest, and states that all fees and commissions must be clearly disclosed in dollar form to clients.
- Several lawsuits are on file challenging the rule.
- The President and his nominee to head the Department of Labor, Andy Puzder, have not directly addressed the rule.
2) Implementation of the Fiduciary Rule (cont.)

» 1/20/2017, new Chief of Staff issues memorandum freezing new or pending regulations. Regulations that have been published, but have not reached their effective date are to be delayed 60 days.

» May be hard to rescind – not within the Congressional Review Act; and the Secretary of Labor is not likely to suspend this rule.

» Meaning, lengthy formal rulemaking process is required to repeal the rule.

» The investment industry has worked very hard to comply with and it may not be welcome to retrench now.
Anthony Scaramucci, the former managing partner of Skybridge Capital who became an advisor for the new administration’s campaign in August 2016, says that Trump will repeal the fiduciary rule.

“We’re going to repeal it.”

“It could be the dumbest decision to come out of the U.S. governments in the last 50 to 60 years.”

“It’s about like the Dred Scott decision.”
3) Delegation of Enforcement Authority

» In 2009, the SEC delegated authority to the Director of Enforcement to open formal orders of investigation. The Director of Enforcement then delegated to the Regional Directors, Associate Directors and Specialized Unit Chiefs in an effort to support Chairperson White’s “broken windows” approach by which deficiencies of all size and nature are addressed.

» Resulted in a record number of enforcement proceedings.

» New Administration could end this practice by appointing a new Chair and new Commissioners who withdraw this delegation.
4) Elimination of the Consolidated Audit Trail

» The Commission adopted Rule 613 to create a comprehensive consolidated audit trail that would allow regulators to track all equity and options trading activity throughout the U.S. markets in the National Market System (NMS) securities.

» Intended to assist in both investigations and monitoring and to make more transparent evidence of fraud and manipulation.

» The new administration has not signaled its position on CAT.

» Proposed Chair, John Clayton, a long time wall street lawyer has publicly stated he will support the new administration’s goal of undoing regulations.
5) Pay Ratio Disclosures

» Dodd-Frank Act instructed the SEC to adopt a rule requiring public companies to disclose “the ratio of the compensation of its CEO to the median compensation of its employees.”

» This rule is already final and effective. Starting in 2018, companies will need to disclose.

» There is some political will to repeal this statute, but the requirement is based in more that Dodd Frank and the current efforts to repeal do not address that.
6) Political Contributions

» In 2011, the SEC received more than 1 million comments on corporate disclosure of political contributions.

» The SEC did not act to require such disclosures (and could not under legal restrictions).

» Not likely the current Congress will require such disclosures, but with new Commissioners during the new administration this may resurface.
7) Elimination of Deference

» Regulatory agencies’ interpretations of the law are historically entitled to deference under the *Chevron Doctrine*.

» The *Chevron Doctrine* comes from a 1984 U.S. Supreme Court case, *Chevron v. NRDC*, in which the court held that it should defer to agency interpretations of ambiguous rules.

» *Chevron Doctrine* requires courts to give deference to an agency’s interpretation of the law *unless* such interpretation is arbitrary or manifestly contrary to a statute.

» House just passed the Regulatory Accountability Act of 2017 rolled together a series of previously passed bills aimed at cutting “overly burdensome red tape.” This version eliminated Chevron Deference.
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