FRESHFIELDS

Take Two: What could a second Trump Administration mean for bank regulation in the U.S.?

David Sewell 11 November 2024

Bank stocks surged the day after Donald J. Trump won election to a second presidential term, recording double-digit gains on a widespread view that financial regulation under the new administration will be more industry friendly than in the current one.[1] Although financial regulation did not feature prominently in the campaign, and it remains to be seen how the second Trump administration will approach many issues, one thing is certain: change is coming. It is safe to assume, moreover, that a de-regulatory approach will prevail—as a candidate, President-elect Trump pledged to eliminate 10 existing regulations for every new regulation his administration enacts.[2]

Below, we highlight initial takeaways and key themes for the banking industry following an election that not only will return President Trump to the White House but also saw Republicans take control of the Senate and (likely) maintain a slim majority in the House of Representatives.[3] We anticipate providing further analysis in the coming months, as agency leadership becomes clear and specific proposals emerge.

The Trump-Vance financial regulatory agenda

Based on recent public statements and President Trump's first term in office, we expect the administration's near-term priorities to include:

- **A rollback of proposed changes to bank capital and liquidity requirements.** A controversial proposal to implement the so-called Basel III endgame capital framework in the United States has been pending for more than a year now, stalled in part by intense criticism from the industry.[4] Under a Trump administration, the current proposal is likely to be replaced by something that may look very different. Pending rules related to long-term debt and rumored changes to liquidity requirements for banks also remain in limbo and may not be finalized.
- **A crypto push.** In stark contrast to the Biden administration's skepticism towards cryptocurrency and blockchain-based financial products, President-elect Trump has been an enthusiastic supporter of (and investor in) cryptocurrencies—saying that he thinks the United States should be the "crypto capital of the planet" and vowing to remove crypto skeptics from administrative posts (for example, at the SEC and CFTC). It is not yet clear how the Trump administration will approach regulatory reform, but the crypto industry was a clear winner in Tuesday's election. In fact, the new administration may enjoy bipartisan support on the issue, with proponents of crypto having prevailed in key congressional races, including incoming California Senator Adam Schiff. The price

of Bitcoin reached record highs after the election, a clear reflection of optimism about the prospects for crypto.[5]

- **An ESG backlash.** The Trump-Vance campaign vigorously opposed environmental and climate initiatives—in general and in the financial sector specifically—as have congressional Republicans. We expect a rollback of regulations and guidance targeting financial institution exposure to climate-related financial risk. Financial institutions also may find it difficult to navigate state-level and shareholder-lead ESG initiatives given the emerging dynamic in Washington.
- **Renewed support for fintech and novel charter types.** The Biden administration's approach to fintech was generally skeptical, as evidenced by its numerous enforcement actions against banking as a service ("BaaS") providers.This was a notable shift from the first Trump term, during which federal financial regulators were generally receptive to fintech companies and products and supportive of non-traditional, "novel" charters for financial institutions (*e.g.*, industrial banks, special purpose depository institutions). We expect a similar approach will guide the incoming administration, subject to some uncertainty given populist concerns about large technology companies, which are certain to remain major players in the fintech space.
- **A less assertive enforcement approach.** Following a meaningful increase in enforcement actions taken over the past three years, we expect the federal banking agencies to be generally less assertive under the incoming administration. This is not to suggest that enforcement will cease, however. During President Trump's first term, banks and other financial institutions continued to face significant scrutiny and enforcement exposure in areas like AML and sanctions, and the same may prove true during this term. Ordinary course bank supervision is also unlikely to change materially.

Will bank M&A rebound?

The "Trump bump" in bank stocks last week also reflected a widespread view that M&A activity will rebound under the new administration, including in the banking sector, which many believe to be primed for a wave of consolidation.

The incoming administration will likely be more receptive to proposed bank mergers, at least directionally. To that end, stringent merger guidelines recently issued by the Office of the Comptroller of the Currency ("OCC"), Federal Deposit Insurance Corporation ("FDIC"), and Department of Justice could be rescinded or pared back. But even if the administration is not inherently skeptical of M&A activity—as the Biden administration has been characterized—the Trump-Vance ticket embraced populist themes that may complicate the picture. Proposed mergers of large institutions and cross-border deals may continue to face close scrutiny and regulatory hurdles, for example.

Personnel and leadership changes

The adage that "personnel is policy" rings especially true for financial services regulation, where agency priorities and interpretations can be as important as black letter law. In this regard, we expect significant changes under the new administration.

The leadership of key federal banking agencies is all but certain to change, and likely soon after the inauguration. The first banking agency leaders up will likely be Consumer Financial Protection Bureau ("CFPB") Director Rohit Chopra, who from his current post as well as during an earlier stint at the Federal

Trade Commission has pursued an aggressive agenda at odds with the incoming administration's, and beleaguered FDIC Chairman Marty Gruenberg. The removal of Gruenberg and/or Chopra would tilt the balance at the FDIC Board, resulting in a Republican majority. Because the FDIC Board has authority to approve or deny large mergers and deposit insurance applications (as well as meaningful regulation) with a simple majority vote, such shift could have a significant impact on the banking sector as a whole.

The picture is slightly more complicated with respect to the OCC and Federal Reserve Board ("FRB"). The OCC is currently led by Acting Comptroller Michael Hsu, whose replacement may be a lower priority compared to the CFPB and FDIC heads. Furthermore, a leadership change at the FRB appears unlikely for some time. During the campaign, president-elect Trump indicated that he would allow Chair Jerome Powell to serve out the remainder of his term, which expires in May 2026—even if not, however, Mr. Powell said at a recent press conference that he will not quit and believes the President lacks authority to remove him without cause.[6] Vice Chair for Supervision Michael Barr may be more vulnerable to removal or demotion given his association with, among other policies, the controversial proposal to increase bank capital requirements. Whether current law allows such action to be taken against the FRB's Vice Chair is not clear.

The View from Capitol Hill

Although financial regulatory policymaking occurs in large measure at the agency level, Congress of course has a significant role to play. On this dimension, the incoming administration appears to be well-positioned.

With a Republican-controlled Senate, the administration will find it easier to secure confirmation of key political appointees and agency leaders than otherwise would be the case. Moreover, Senator Tim Scott of South Carolina appears poised to take over as Chairman of the Senate Banking Committee, replacing progressive Ohio Senator Sherrod Brown. On a wide range of issues, Senator Scott is likely to be fully aligned with the administration's position. An open question is who will take over as ranking member on the Democratic side, with Senator Brown having failed in his bid to retain his seat. The leading candidates appear to be Senators Elizabeth Warren and Mark Warner—the former likely to be a vocal critic of the administration's expected approach to financial regulation. As a member of the minority, however, the ranking member's influence is inherently limited.

Control of the House of Representatives remains unsettled, with Republicans appearing to be on track to retain their majority. In that event, President-elect Trump's ability to take material legislative action would be secure essentially from Day 1. Additionally, several late-term Biden administration rules are amenable to challenge under the Congressional Review Act ("CRA")—for example, the CFPB's recent "Open Banking" rule. With a Republican majority in the House, any CRA challenge would appear to have decent odds of success. [7]

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[1] US banks to gain from looser capital, merger policies under Trump | Reuters

[2] Trump's Ten Rules Out For Every One Rule In: How Would That Work? (forbes.com)

[3] At the time of writing, several House races have not been called, and it is not yet certain which party will control. However, many commentators are predicting a narrow Republican win.

[4] Federal Banking Agencies Begin to Outline the Post-SVB Regulatory Framework, David Sewell, Francesca Loreto (freshfields.us)

[5] Bitcoin price hits record high as Trump’s win boosts crypto | AP News

[6] Fed's Powell says he will not quit even if asked by Trump | Reuters

[7] All votes under the CRA are simple majority votes in both chambers, so challenges under the CRA are easier to get across the finish line than other legislation, which require 60 votes in the Senate.