Financial Regulation in the Trump Era

Enforcement, or Appeasement?

Government Turns a Blind Eye to Fraud and Misconduct, and Curtails its Crucial Oversight and Enforcement Role

By Julia Tebor

> Although Trump the candidate claimed that hedge fund managers were "getting away with murder," the Trump administration has taken a markedly anti-investor, pro-corporate, and bank-friendly tack.

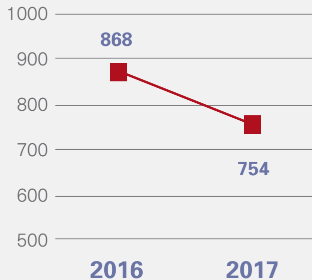
In just one year, the Trump administration has made dramatic anti-investor and anti-consumer changes to the federal regulatory environment. The administration's pro-Wall Street agenda may take some of his supporters by surprise because his campaign for the presidency was largely built on an anti-Wall Street platform. On the campaign trail, Trump claimed that hedge fund managers were "getting away with murder" and his closing campaign ad denounced "a global power structure that is responsible for the economic decisions that have robbed our working class, stripped our country of its wealth and put the money into the pockets of a handful of large corporations."

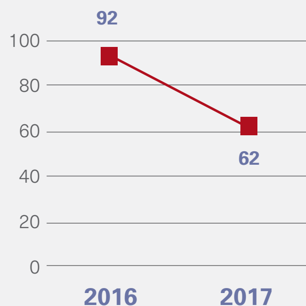
In the first year of his presidency, however, the Trump administration has taken a markedly anti-investor, pro-corporate, and bank-friendly tack. SEC enforcement actions are down; Trump has signed executive orders aimed at repealing large portions of The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") and restricting the power of the Consumer Financial Protection Bureau; and the Administration made new appointments to the Public Company Accounting Oversight Board that threaten to weaken oversight of accountants for large public corporations.

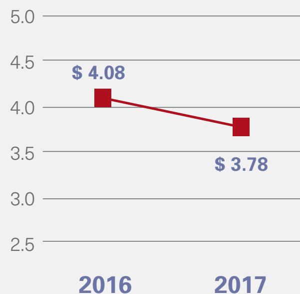
The SEC reduces enforcement under Trump

President Trump has already made dramatic changes to the SEC. As one of his first acts as President, Trump selected as head of the SEC former Sullivan & Cromwell attorney Jay Clayton. Clayton had worked for many large financial companies, including Barclays, JPMorgan Chase, and Goldman Sachs. Trump assured the public that Clayton would "ensure our financial institutions can thrive and create jobs while playing by the rules

SEC Activity under Trump







at the same time," but many worry that based on Clayton's background, he will favor lax enforcement. For example, Senator Sherrod Brown, ranking member of the Senate's Banking Committee, said of Clayton: "It's hard to see how an attorney who's spent his career helping Wall Street beat the rap will keep President Trump's promise to stop big banks and hedge funds from 'getting away with murder.'"

New studies also indicate that the SEC under Trump is bringing fewer enforcement actions and recovering smaller fines for misconduct than under the prior administration. These studies show that the number of enforcement actions has dropped 13 percent, from 868 actions in 2016 to just 754 in 2017. Enforcement actions dropped even further for publically listed companies, falling nearly 33 percent from 92 to 62 actions over the same period. Settlements are also down at the SEC, decreasing from $4.08 billion in 2016 to $3.78 billion in 2017. As the new administration gained a foothold and as 2017 progressed, enforcement appears to have weakened even more dramatically: From the first half of 2017 to the second half of 2017, settlements in SEC actions against public companies fell by over 80 percent.

Executive orders aim to gut regulations on financial institutions

President Trump is also seeking to protect financial institutions through executive orders. For example, on February 3, 2017, Trump signed an executive order paving the way for reversing the "fiduciary rule." The fiduciary rule is a new rule — yet to be fully implemented by the Department of Labor ("DOL") — that would require investment advisors to put their clients' interests above their own interests. The implementation of major parts of this rule has been delayed repeatedly, and the President's order provides a pathway for the DOL to rescind or revise the rule by asking the DOL to re-analyze it, questioning its utility yet again. Following Trump's executive order, the DOL stated that it was delaying full implementation of the fiduciary rule from January 2018 until July 2019 to make Trump's requested assessment of the rule.

Trump is also attempting to use executive orders to dismantle the Consumer Financial Protection Bureau ("CFPB"). The CFPB, created under Dodd-Frank, was designed to operate as an independent watchdog agency helping consumers nationwide. Since its creation in 2010, the agency has already imposed huge fines on big businesses for illegal practices. In 2015, the CFPB ordered Citibank to refund $700 million to consumers and pay $70 million in fines for illegal and deceptive credit card practices and, in 2016, it fined Wells Fargo $100 million for opening sham accounts. In total, the CFPB has returned nearly $12 billion from financial services firms to their consumer victims.

In the Trump era, however, the newly-created CFPB is already facing existential threats from above. On the same day as his executive order seeking to rescind the fiduciary rule, Trump targeted the CFPB by signing the Presidential Executive Order on Core Principles for Regulating the United States Financial System. Trump's order instructs the Treasury Department to review the laws, regulations, guidance, and policies of federal agencies and the extent to which they comply with the goals of the Executive Order, which in-

clude to "rationalize" federal financial regulations. While the order does not mention the CFPB by name, the White House press secretary made clear that the order targeted the CFPB, calling it an "unaccountable and unconstitutional new agency." The administration's attacks continued in November 2017, when Trump appointed Mick Mulvaney as Director of the CFPB. Mulvaney has been quoted as saying that the CFPB is a "joke…in a sad, sick kind of way" and that "I don't like the fact that the CFPB exists." Tellingly, Mulvaney announced in January 2018 that the CFPB was requesting *zero dollars* in funding for the second fiscal quarter of 2018 and was reviewing its entire operation.

> We are moving "in the opposite direction of the most urgently needed kind of Wall Street reform. De-concentrating financial power (and the systemic risk associated with such concentration) would be the best guarantee that we never have a repeat of 2008, in which all the biggest depository banks put the entire financial system at danger by acting like giant hedge funds."
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> *Author and Journalist Matt Taibbi on the current effort to repeal key aspects of Dodd-Frank (January 20, 2018)*

The Trump administration also announced in January 2018 plans to revise the Community Reinvestment Act ("CRA") — an act created in the 1970s to protect the poor from banks that refuse to service impoverished, predominantly minority neighborhoods. While the exact changes to the law are yet unclear, the changes would likely make it easier for banks to avoid being penalized for non-compliance with the CRA. This move may ultimately be problematic for the Trump Administration given that, as stated by John Taylor, CEO of the National Community Reinvestment Coalition, this law benefits the "blue-collar people Donald Trump maintains he represents."

The SEC appoints a more auditor-friendly PCAOB

As part of the administration's deregulation campaign, it also recently changed the leadership at the Public Company Accounting Oversight Board ("PCAOB"). The PCAOB is a private-sector, nonprofit corporation created in 2002 to oversee audits of public companies. Even after some of the biggest and most destructive audit frauds in recent memory, such as Enron and WorldCom, audit fraud still remains rampant in corporate America today. A 2016 survey by the International Forum of Independent Audit Regulators, for example, found that 42 percent of the 855 audits studied did not meet inspectors' standards. In this environment, the importance of the PCAOB and its independence from regulatory capture by the industry it regulates cannot be overstated.

Unfortunately, and as discussed further in this edition of The Advocate (see page 12), the PCAOB was recently rocked by an unprecedented scandal in which one of the nation's largest auditing companies, KPMG, stole PCAOB information in order to evade and cheat its regulatory oversight. While this scandal illustrates the need for an independent PCAOB, recent

In the Trump era, the newly-created Consumer Financial Protection Bureau is already facing existential threats from above.

House Finance Committee Chairman Jeb Hensarling (R-TX), sponsor of the "Financial Choice Act," — legislation that aims to roll back certain provisions of Dodd-Frank. (Photo: Chip Somodevilla/Getty Images)

appointments under the Trump administration may erode such independence. Specifically, the SEC recently rejiggered the PCAOB's Board membership as part of a five-member shake-up. To boost the Board's independence from the industry it regulates, certified public accountants are prohibited from chairing the Board and are traditionally excluded as members as well. The SEC, however, appointed two CPAs as members, taking the unprecedented step of including as a Board member an accountant from one of the big four accounting firms. This change in personnel may foreshadow a more auditor-friendly Board.

Congressional Republicans push to repeal Dodd-Frank

Emboldened by Trump's agenda, Congressional Republicans are seeking to protect financial institutions through revision and repeal of many of the provisions of Dodd-Frank. Passed in 2010 as a response to the financial crisis of 2007-2008, Dodd-Frank aimed to protect investors, the financial system, and the broader economy. President Trump and the GOP Congress, however, are openly hostile to Dodd-Frank. Despite record profits for big banks, Trump recently opined that Dodd-Frank has made it "impossible for bankers to function." In November 2017, Trump stated that "[w]e have to get rid of [Dodd-Frank] or make it smaller…Banks are unable to lend. It's made our country noncompetitive. It's slowed down growth."

With this tone at the top, several Republican-sponsored bills have been introduced in an effort to chip away at Dodd Frank's financial regulations. One of these, the "Financial Choice Act," has the ambitious goals of: (i) repealing the Volcker Rule, which prevents government insured banks from making certain risky investments; (ii) eliminating the fiduciary rule; and (iii) circumscribing the CFPB's rulemaking and enforcement abilities. The bill, sponsored by the Republican Chair of the House Financial Services Committee, Jeb Hensarling, would also provide banks leeway to avoid further regulatory burdens. While the Financial Choice Act passed in the House, the bill appears unlikely to pass the Senate.

The obvious and stated goal of the Trump administration is to create a less-regulated environment for banks and other financial businesses. To many, however, this course of action sets the country on a dangerous trajectory towards fraud, misleading financial statements, weaker securities markets, and potentially an economic downfall. In the words of Representative Maxine Waters, currently the top Democrat on the House Financial Services Committee, the Financial Choice Act and other such legislation is "an invitation for another Great Recession, or worse."

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