

# Post-Election Outlook for Financial Regulatory Agencies: U.S. Securities and Exchange Commission

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Republican president-elect Donald J. Trump, with the support of a Republican controlled Senate and House of Representatives, promises to bring in a new era of limited government, rolling back legislation enacted under President Obama's administration. This transition to a new administration will have a significant impact on each of the federal financial regulatory agencies, including the U.S. Securities and Exchange Commission (the "SEC").

## **Background**

The SEC has five Commissioners. Each Commissioner is appointed by the President of the United States with the advice and consent of the Senate for staggered five year terms. The President also designates the Chair of the SEC. Although the President has the power to appoint Commissioners, the President does not have the authority to remove Commissioners, nor does the President have the authority to appoint more than three Commissioners from the same political party.

Currently, the SEC only has three Commissioners: Chair Mary Jo White (I), Commissioner Kara Stein (D), and Commissioner Michael Piwowar (R). President Obama nominated a candidate for each of the two open Commissioner seats. However, the candidates were never brought to a floor vote in the Senate, in large part because of their views with respect to political spending disclosure. Many

Senate Democrats, particularly Senator Elizabeth Warren and Senator Sherrod Brown, wanted the candidates to express their strong support for requiring disclosure on political spending activities. The SEC requires three Commissioners to be present to reach quorum, so all three must be present for a rulemaking, and any Commissioner can stop a rulemaking simply by not showing up.

## ***Trump Administration***

President-elect Trump's transition team has sent a clear signal of the new direction at the agency by promising to "[dismantle the Dodd-Frank Act and replace it with new policies to encourage economic growth and job creation.](#)" Due to the number of appointments and a Republican controlled Congress, we expect to see significant change at the agency under the Trump administration, including:

*New Commissioners and Confirmation:* With two seats vacant, and Chair Mary Jo White's recent [announcement](#) that she intends to step down at the end of President Obama's administration, President-elect Trump will have the ability to appoint three Commissioners, including two Republicans, designate a Chair, and, as a result, significantly alter the direction of the agency. When Chair White steps down at the end of President Obama's term, we expect that Michael Piwowar, the sole Republican Commissioner, will be appointed as interim Chair. We don't believe that the departure of Chair White will keep the agency from moving forward with its mission, even if there are three open Commission seats. The bread and butter work of the SEC, including review of disclosures, the publication of interpretive guidance, routine enforcement activity, market supervision, inspections, and examinations will continue. In addition, the two Commissioners will continue to be able to make Commission-level decisions, thanks to a "[Rule of Two](#)," which was adopted in 1995 during the Clinton Administration to allow the Commission to conduct Commission business during a prolonged appointment process. The rule provides that if there are less than three Commissioners in office, a quorum consists of the number of members in office, and thus supersedes the normal three-Commissioner quorum requirement. Even with the Rule of Two, however, the Commission is hamstrung if one of the two Commissioners refuses to act on a matter.

*Dodd Frank and Pending Rules/Regulations:* President-elect Trump appointed Paul Atkins, current CEO of Washington, D.C. consulting firm Patomak Global Partners and a Republican Commissioner from July 2002 until August 2008, as his point person for financial regulatory appointments. As Commissioner, Atkins was an outspoken critic of many SEC rules and regulations, including those related to executive compensation, corporate governance, and Investment Company Act-related governance. Since leaving the SEC, Atkins has criticized the Dodd-Frank Act and the rules and regulations implementing it. It is reasonable to expect that the candidates he recommends to fill the open Commissioner seats will share similar views on financial regulation. If the new Commissioners do share Atkins' views, it will significantly impact the rollout of the rules and regulations required by Dodd-Frank that the SEC has yet to adopt. Dodd-Frank rulemaking, as well as other SEC rulemaking projects including universal proxy rules and the board diversity initiative, are likely to be meaningfully scaled back if not entirely eliminated from the SEC's near-term agenda.

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