Impact of 2016 US Elections on Dodd-Frank

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During the campaign, ***President-Elect Trump*** was critical of ***Dodd-Frank*** and spoke of repealing it. While we believe that a complete revocation is unlikely, we expect that several Dodd-Frank rules relating to executive compensation may be pared down or eliminated by the new administration acting in partnership with the Republican-controlled Congress.

The ***US Securities and Exchange Commission (SEC)*** has not yet finalized many of the Dodd-Frank executive compensation rules, with the exception of the CEO pay ratio rule. The SEC currently has two Commissioner vacancies. As such, it lacks a quorum to proceed to a vote on Dodd-Frank rules and other matters unless the Republican Commissioner consents, which is unlikely. We expect that the new administration will fill the vacancies and move toward a more business-friendly agenda.

The Dodd-Frank rules that may be modified or eliminated include the following:

CEO Pay Ratio. The final rules on CEO pay ratio require public companies to disclose their CEO pay ratios in 2018 proxies. Republican members of Congress and SEC Commissioners have criticized pay ratio disclosures as providing little benefit to shareholders relative to the administrative burdens on companies. The House Financial Services Committee recently approved legislation that would repeal the CEO pay ratio rule and make changes to other Dodd-Frank requirements.

Mandatory Clawbacks. Proposed rules that were issued in 2015 would require public companies to adopt, disclose, and comply with a written policy to recoup incentive-based compensation in the event of a financial accounting restatement resulting from material noncompliance with any financial reporting requirement under the securities laws (no-fault rule). Republican SEC Commissioners have argued that the list of officers to whom the rules would apply is much broader than Dodd-Frank required. The proposed Dodd-Frank clawback rules raise significant issues with respect to interpretation and enforcement.

Pay vs. Performance Disclosure. Proposed rules were issued in 2015 that would require public companies to include additional proxy disclosure on CEO and named executive officer pay, relative Total Shareholder Return (TSR) performance, and a narrative on the relationship between pay and TSR performance.

Incentive Compensation for Financial Institutions. Proposed rules were issued in 2016 that would impose significant, detailed new requirements on incentive compensation provided by financial institutions. The proposed rules would subject incentive compensation to deferral, forfeiture, downward adjustment, and clawback requirements, and would require senior executive officers of the largest financial institutions to have 60% of their incentive pay at risk for up to 11 years.

If Congress were to completely repeal Dodd-Frank, the Dodd-Frank requirements that are currently in effect (say-on-pay, frequency of say-on-pay, and say-on-golden parachute) would be revoked, as well as proxy disclosure requirements such as compensation committee independence. While we do not foresee a complete repeal of Dodd-Frank, it does appear likely that some or all of the rules that are not yet in effect will be rescinded.

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