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President Trump Signs Executive Order Establishing “Core Principles” of Financial Regulation and Addressing the DOL Fiduciary Rule

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On Friday, Feb. 3, 2017, President Trump signed an executive order entitled, “Core Principles for Regulating the United States Financial System.” While the Order was widely characterized as commencing a roll-back of financial regulations, including the Dodd-Frank Act and the Fiduciary Rule,[1] the text of the actual order is more modest. It instead sets forth a set of “Core Principles” which it directs the Secretary of the Treasury and the Financial Stability Oversight Council to consider in reviewing existing laws and regulations and to report back to the President within 120 days on steps which may be needed to support those Core Principles. The Core Principles set forth are:

1. empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;
2. prevent taxpayer-funded bailouts;
3. foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;
4. enable American companies to be competitive with foreign firms in domestic and foreign markets;
5. advance American interest in international regulatory negotiations and meetings;
6. make regulation efficient, effective, and appropriately tailored; and
7. restore public accountability within Federal regulatory agencies and rationalize the Federal regulatory framework.[2]

The Order has no immediate impact on existing regulations, other than to direct regulatory agencies to enforce a set of priorities. While certain aspects of Dodd-Frank can be addressed by executive agencies, significant changes would likely require congressional action, such as the “Financial CHOICE Act” being advocated for by House Financial Services Committee Chairman Jeb Hensarling. Regardless, the order provides insight into which aspects of the existing regulatory framework are likely to survive or be jettisoned if the White House is successful in implementing its objectives.

On Feb. 3 President Trump also signed an Executive Order addressing the Department of Labor (DOL) Fiduciary Rule. The final memo (attached) is addressed to the Secretary of Labor and states that the President has made it a priority to empower Americans to make their own financial decisions and save for their own well-being. The memorandum states that the Rule "may significantly alter the manner in which Americans can receive financial advice, and may not be consistent with the policies of my Administration." The President directs the Secretary of Labor to conduct a new economic and legal analysis to determine whether the rule: (i) has or is likely to harm investors by reducing access to savings offerings; (ii) has resulted in dislocations and disruptions in the retirement services industry that may adversely affect investors or retirees; and (iii) is likely to cause an increase in litigation and increase in the prices that investors must pay to gain access to retirement services. This echoes many of the concerns voiced by opponents of the Rule. The memo further states that if the Secretary of Labor concludes that the rule is likely to result in any of the consequences described above or if the DOL concludes for **any other reason** that the rule is inconsistent with the administration's priority to empower Americans to make their own financial decisions, then the DOL shall publish a proposed rule for notice and comment "rescinding or revising" the Rule. Contrary to earlier reports, the final memo does not contain any language directing the DOL to delay Rule implementation 180 days. It appears that the administration may have removed originally reported explicit implementation delay language before releasing the memorandum late Friday afternoon, possibly relying on the Jan. 23, 2016 memorandum by Chief of Staff Reince Priebus ordering all executive department and agency heads to institute a moratorium on new rules and delaying finalized rule effective dates 60 days. This would potentially push the Rule implementation date to June, although there is some uncertainty as to the application of this memorandum to the Rule.

The Order does not send a clear message as to the fate of the Rule and it does not put a deadline on when the Secretary of Labor must make the determinations described in the memo. That being said, the Order reflects many opponents' criticisms of the Rule and provides the Secretary of Labor with broad discretion to propose a rule that rescinds or revises the Rule if he concludes "for any other reason" that the Rule is inconsistent with the President's priority with respect to American investors. For now there is an acting Secretary of Labor, but the confirmation hearings for the President's appointee as Secretary of Labor, Andrew Puzder, CEO of CKE Restaurants that owns Hardees and Carl's Jr. restaurants, were delayed again last week to an undetermined date.

Commentary regarding the Order indicates that "insiders" think this Order will result in the implementation of the Rule being delayed and that the Rule ultimately will be rescinded by a subsequent rule. Others believe complete rescission is unlikely for a rule that is advertised as protecting the American investing public. In any case the process will take time.

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[1] *See, e.g.,* "Trump Signs Actions to Begin Scaling Back Dodd-Frank," Wall Street Journal, February 3, 2017, https://www.wsj.com/articles/trump-signs-executive-actions-toward-scaling-back-dodd-frank-financial-regulation-1486148274

[2] Presidential Executive Orer on Reducing Regulation and Controlling Regulatory Costs, https://www.whitehouse.gov/the-press-office/2017/01/30/presidential-executive-order-reducing-regulation-and-controlling

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