November 12, 2024

Return of the Trump Administration: Some Predictions for Investment Managers

Clearly Wall Street is reacting positively to the election of former President Trump. Stocks hit record highs the morning after Election Day, and the dollar posted its biggest one-day jump in four years. But what are the potential longer-term ramifications of this election for the investment management industry? Based on Trump's recent statements, asset managers should expect some changes in the regulatory environment, which could include the following:

1. Is Gensler Out? Trump stated at a bitcoin conference held last summer that he would "fire" SEC Chair Gary Gensler on "day one." While Trump likely does not have the authority to fire Gensler, whose term runs through June 2026, traditionally the SEC chair resigns upon a new administration. If Gensler does not step down promptly, Trump has the authority to replace him as chair with one of the two Republican commissioners, Hester Peirce or Mark Uyeda, until a new Republican chair is confirmed by the Senate.
2. Will Enforcement be Relaxed? Under Gensler, the SEC aggressively pursued enforcement actions and issued record-breaking fines. Critics have lambasted the SEC's approach to off-channel communications and cryptocurrency exchanges as "regulation by enforcement," and they have objected to its policy of requiring admissions of wrongdoing from companies and individuals settling enforcement actions. Based on the previous Trump administration's approach to enforcement matters, the SEC may shift its focus to more traditional violations of the securities laws.
3. Will Crypto Get Hotter? Trump has promised to make the United States the "crypto capital of the planet" and to make bitcoin the "superpower of the world." This may auger a retreat from Gensler's position that cryptocurrencies are securities. The new administration may engage with the crypto industry to create a new regulatory framework for cryptocurrencies that could include a safe harbor from SEC registration for token offerings.
4. Are Finders In? At the tail end of the prior Trump administration, the SEC proposed a limited, conditional exemption from federal broker-dealer registration requirements for "finders" who identify and solicit accredited investors to purchase securities offered through private placements. The proposal, if adopted, would have allowed finders to receive success fees, subject to certain conditions. Based on the former president's statements about promoting capital formation for small businesses, this proposal may reemerge.
5. Will Private Markets Become More Accessible to Retail Investors? In the past, Republican SEC commissioners have suggested that retail investors should have the ability to invest directly in private company securities and private funds, which are currently restricted to wealthy, sophisticated investors. Rulemaking could make additional opportunities for wealth creation and diversification more accessible to retail investors, while providing small businesses with new sources of capital. The second Trump administration might decide to expand crowdfunding or relax the investor sophistication requirements for investments in private companies and private funds.

Big changes could be in store for investment managers. If you have questions about any of the matters discussed in this alert, please contact any member of the Day Pitney Investment Management team.

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