
February 9, 2017

President Signs Executive Order on Core Principles for Regulating the U.S. Financial System

On February 3, 2017, President Donald Trump signed an executive order setting forth “Core Principles” intended to guide the regulation of the U.S. financial system. Although not specifically mentioned in the executive order, revisions to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) will likely be a focus of scrutiny based on comments made by the President and his staff during the campaign and by the President at the time of the order’s signing.

The Core Principles envision regulation that would:

- empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement and build individual wealth;
- prevent taxpayer-funded bailouts;
- 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;
- enable American companies to be competitive with foreign firms in domestic and foreign markets;
- advance American interests in international financial regulatory negotiations and meetings;
- make regulation efficient, effective and appropriately tailored; and
- restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.

The executive order requires that the Secretary of the Treasury consult with the heads of the member agencies of the Financial Stability Oversight Council (“FSOC”), a body chaired by the Secretary that includes the heads of various federal financial regulators, and report to the President within 120 days (and periodically thereafter) on the extent to which existing laws, treaties, regulations, guidance, reporting and recordkeeping requirements and other governmental policies promote or inhibit the Core Principles, and what actions have been taken, and are currently being taken, to promote them.

It is early to predict the contours of the legislative and regulatory reforms that the Trump Administration may pursue as a result of this process. The potential changes to Dodd-Frank and other areas of financial regulation could be significant, and the impact of such changes could be felt well beyond the borders of the United States.

Efforts to roll back financial regulation in the House of Representatives have been ongoing for some time. In September 2016, the House Financial Services Committee approved the Financial CHOICE Act, which, among other things, would have provided banks with an alternative to certain Dodd-Frank provisions in return for an increased capital requirement, reformed the Consumer Financial Protection Bureau, repealed the Volcker Rule, replaced the Orderly Liquidation Authority with new provisions under the Bankruptcy Code that would address the failure of large financial institutions, and eliminated the ability of FSOC to designate nonbank financial companies as systemically important financial institutions. The Financial CHOICE Act could provide indications of what the Treasury Secretary may focus on in his report to the President, although it should be noted that Treasury Secretary nominee Steven Mnuchin has voiced support for the Volcker Rule, with adjustments. It has been reported that Financial Services Committee Chairman Jeb Hensarling is planning to introduce a new version of the Financial CHOICE Act shortly.

In light of the sheer complexity of the rulemaking that was mandated by Dodd-Frank, it would be difficult and time consuming to unravel one or more of the regimes created by that legislation. Since the financial crisis, the focus by the Financial Stability Board and other international forums has been on harmonizing approaches to financial regulation. The success of those efforts has been mixed, but the cross-border impact of an approach that deviates from global standards could raise significant challenges to cross-border access for global firms, particularly where market access is dependent upon a finding of “equivalence.”

We will continue to monitor both executive and legislative developments in financial system regulation.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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