Trump Transition: Financial CHOICE Act — Only the Beginning

November 17, 2016

President-Elect Trump's transition website promises to "dismantle the Dodd-Frank Act and replace it with new policies to encourage economic growth and job creation." For those who wonder what that might mean in more detail, we believe that Rep. Jeb Hensarling's (R-TX) Financial CHOICE Act, introduced earlier this year, is a starting point that signals a potential general direction of travel for financial reform. It is not the end, however, as we expect that the Republican Congress and Administration will have more ambitious plans for a significant reorientation of the regulatory framework (for instance, Rep. Hensarling has stated that he will work towards Financial CHOICE Act 2.0 soon), and complex negotiations both within the Republican Party and with Democrats will further shape the ultimate result.

The Financial CHOICE Act is not a blanket repeal of the Dodd-Frank Act. Its 512 pages would make intricate changes to the regulatory landscape introduced by the Dodd-Frank Act, repealing some elements, modifying others in complex ways and leaving others untouched. It would repeal the Volcker Rule, the Durbin Amendment, the Orderly Liquidation Authority (to be replaced by changes to the Bankruptcy Code) and the DOL fiduciary duty rule. Neither the Financial CHOICE Act, nor the transition website, mentions the Glass-Steagall Act. The regulation of over-the-counter derivatives would remain in place.

The Financial CHOICE Act would:

- Provide a Dodd-Frank off-ramp for certain banking organizations that have a leverage ratio of at least 10% and CAMELS ratings of either 1 or 2;
- Eliminate the OFR;
- Downgrade FSOC and remove its nonbank SIFI designation authority;
- Retain the CFPB in an altered and diminished form;
- Further limit the Federal Reserve's Section 13(3) emergency lending authority and the Treasury's authority under the Exchange Stabilization Fund;
- Significantly alter SEC enforcement authority;
- Repeal the FDIC's systemic risk powers, including its authority to do anything like the Temporary Liquidity Guarantee Program; and
- Otherwise limit the Federal Reserve's independence in many areas, including in monetary policy.

A number of separation of powers reforms are contemplated that would bring the federal financial agencies (including the non-monetary policy operations of the Federal Reserve) into the congressional appropriations process and otherwise under more congressional oversight. The Financial CHOICE Act would also subject their participation in the Basel Committee, the Financial Stability Board and other international financial regulatory coordination bodies to public notice and comment requirements. Finally, it would require congressional approval of major rules and impose a robust cost-benefit analysis requirement on these agencies. It would also make a number of changes designed to encourage capital formation in the goal of jobs growth.

The chart below provides a high-level summary of what the Financial CHOICE Act would do, expanding on the themes mentioned in this introduction and others.

Title	Topic	Major Proposed Changes	Commentary and Analysis
Major Complete Repeals			
IX	Volcker Rule	▪ Complete repeal.	This would mean that banking entities would again be permitted to engage in market-making, hedging, underwriting and similar activities, as well as sponsoring, investing in and having credit relationships with covered funds, without the strict limitations and compliance burdens of the Volcker Rule.
III.C	Durbin Amendment	▪ Complete repeal of Durbin Amendment price controls for interchange fees on debit card transactions.	
IV.B	DOL Fiduciary Rule	▪ Complete repeal.	The DOL would retain authority to issue a fiduciary rule, but would be prohibited from doing so unless and until the SEC adopted a uniform fiduciary duty rule for investment advisers and broker-dealers pursuant to Section 913 of the Dodd-Frank Act. The SEC is authorized, but not obligated, to do so.
II.B	Orderly Liquidation Authority	▪ Complete repeal, but would be replaced with a new Subchapter V to Chapter 11 of the Bankruptcy Code (also known as new Chapter 14).	An alternative to the complete repeal of the Orderly Liquidation Authority might be amendments that would make it a more rule-based statute with constraints imposed on the FDIC's discretion.
II.A	OFR	▪ Complete repeal.	
Dodd-Frank Prudential Regulation Off-Ramp			

I	Regulatory Relief for QBOs	▪ Strongly-capitalized and well-managed banking organizations would be eligible to opt into a lighter regulatory framework.
		▪ To be treated as a qualifying banking organization (QBO), a banking organization must:
		  ▪ Maintain an average leverage ratio of 10% or more, averaged over the trailing four quarters (additional detail below);
		  ▪ Maintain CAMELS composite ratings of 1 or 2
			The QBO standard poses a high bar, and its practical utility is uncertain. To meet the 10% mSLR criterion based on their current activities, large banking organizations, including the U.S. G-SIBs and most regional banking organizations, would need significantly more capital. In any event, banking organizations that are subject to outstanding supervisory or enforcement

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		for its insured depository institution subsidiaries; and ▪ Elect to be treated as a QBO. ▪ The definition of the leverage ratio relevant to qualification as a QBO would vary depending on the complexity of the banking organization. ▪ All but the simplest banking organizations would use a modified supplementary leverage ratio (mSLR), equal to the ratio of tangible equity to Basel III total leverage exposure, a non-risk-weighted exposure measure that includes both on- and off-balance sheet assets. ▪ Certain simple banking organizations—i.e., insured credit unions and banking organizations with no trading activities and no swaps activities (except for de minimis interest rate and FX swaps)—would use alternate leverage ratios equal to the ratio of tangible equity to a non-risk-weighted measure of total on-balance sheet assets. ▪ QBOs would be exempt from: ▪ All capital requirements, other than the 10% leverage ratio described above, including limits on capital distributions; ▪ All liquidity requirements, including the LCR and net stable funding ratio (NSFR); ▪ Most enhanced prudential standards (EPS), including mandatory supervisory and company-run stress tests, risk committee, single counterparty credit limits, contingent capital, short-term debt limit and leverage limit requirements; ▪ Living wills; ▪ Various concentration limits related to M&A activity; ▪ Consideration by regulators of the financial stability factor with respect to their general examination authority and review of M&A and permissible activities; and ▪ The requirement for BHCs having total consolidated assets of $50 billion or more to notify the Federal Reserve Board of the acquisition of any company that is engaged in activities described in Section 4(k) of the Bank Holding Company Act (financial activities) having total consolidated assets of $10 billion or more.	actions might not be able to meet the CAMELS criterion or ensure stable compliance over time, given the discretionary and opaque nature of the examination process. Smaller banking organizations able to meet the QBO criteria would mostly receive relief from requirements that either do not apply to them or have no impact on them as a practical matter (e.g., EPS, living wills and concentration limits on M&A transactions). Some very well-capitalized intermediate holding companies of foreign banking organizations may be positioned to elect QBO treatment.

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		▪ QBOs would still be subject to: ▪ EPS requiring public disclosures on risk and the inclusion of off-balance sheet activities in computing leverage exposures; and ▪ Discretionary supervisory stress tests, but the banking agencies could not impose limits on capital distributions as a result of those stress tests. ▪ All other BHCs with $50 billion or more in assets would continue to be subject to the existing Dodd-Frank EPS and living will requirements.	
Restructuring of the CFPB			
III.A III.B III.C	Consumer Financial Protection	▪ The Consumer Financial Protection Bureau (CFPB) would be renamed the Consumer Financial Opportunity Commission (CFOC). ▪ A five-member bipartisan commission would replace single director as agency leadership. ▪ Funding would become subject to Congressional appropriations process. ▪ A dual mandate would be imposed on the CFOC to strengthen participation and increase competition in markets, in addition to consumer protection. ▪ "Abusive" would be eliminated from scope of authority to police "unfair, deceptive, or abusive acts or practices" (UDAAP), aligning to pre-Dodd-Frank scope of FTC Act authority. ▪ New rulemakings would be subject to cost-benefit analysis and additional review by the Office of Economic Analysis (OEA), newly established within the CFOC, for impact on consumer price, choice and access. Public reports would be required. ▪ The OEA would conduct a retrospective review of each rule's effectiveness after 1, 2, 5 and 10 years, with public reports required. ▪ Would repeal the CFPB's 2013 indirect auto financing guidance. ▪ The CFOC's authority to obtain information from regulated entities would be greatly narrowed, e.g., by restricting access to exam reports and requiring consumer consent for access to	The new CFOC would retain much of the CFPB's authority under federal consumer protection laws, but would be subject to constraints on rulemaking, supervision and enforcement that would greatly inhibit its ability to exercise its authority in the same manner. The Financial CHOICE Act provisions were written before the recent D.C. Circuit decision in *PHH v. CFPB.* It is not clear whether the critics of the CFPB would prefer codifying the D.C. Circuit's decision by expressly converting the CFPB into an executive agency, with the director removable by the President at will, or leaving it as an independent agency with a new name and a multi-member board governance structure. Nor is it clear whether the critics would prefer a complete repeal of the CFPB statute or a new CFOC that establishes a more balanced set of national disclosure and other consumer protection standards that preempt the crazy-quilt of state consumer protection regulation.

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		nonpublic personal information. ▪ Would permit a respondent to compel the CFOC to bring a civil action in court instead of an administrative proceeding. ▪ Would permit a respondent who receives a civil investigative demand to petition in federal court for an order modifying or setting aside the demand. ▪ Would require the Chair to issue advisory opinions upon request. ▪ Benchmark for the CFOC's supervisory authority would be raised from $10 billion to $50 billion. ▪ Would establish an independent inspector general. ▪ Would require complaints in database to be verified before being made public.	
III.C	Arbitration	▪ Would repeal the CFPB's authority to restrict arbitration.	Earlier this year, the CFPB proposed a rule that would prohibit mandatory arbitration clauses.
Repeals of Executive Compensation Provisions			
IV.B	Executive Compensation	▪ Would repeal requirement that publicly traded companies disclose the ratio of median employee vs. CEO pay. ▪ Would repeal the requirement that publicly traded companies disclose whether their employees and directors can hedge their company equity securities. ▪ Would amend the requirement that publicly traded companies have a "say on pay" vote as frequently as annually, such that it would occur only when the company has made a material change to its executive compensation; therefore it would also eliminate the "say when on pay" vote. ▪ Would limit clawbacks of compensation to those current or former executive officers of a publicly traded company who had control or authority over the company's financial reporting that resulted in the accounting restatement. ▪ Would repeal interagency rulemaking requirement to prohibit incentive compensation	Would repeal and modify many key Dodd-Frank Act executive compensation measures. Nevertheless, we expect public companies would remain under pressure from investors in designing compensation programs that are tied to pay for performance. Financial institutions would continue to be subject to "safety and soundness" review, which has resulted in many financial institutions adopting, in connection with such reviews, deferrals and metrics that are intended to minimize the risk of driving short term goals, without regard for long-term risks. Proxy advisory firms and many institutional investors will still pressure public companies to prohibit hedging by executive officers.

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<tr><th>Title</th><th>Topic</th><th>Major Proposed Changes</th><th>Commentary and Analysis</th></tr>
<tr><td></td><td></td><td>of covered financial institutions from being excessive or from leading to material financial loss to the institution; current proposed rule would require mandatory deferrals and clawback for sizable populations at institutions with more than $50 billion in assets. Would retain interagency guidance that compensation must be consistent with safety and soundness standards.</td><td>Proxy advisory firms and many institutional investors will likely pressure public companies to have annual “say on pay” votes, due to corporate governance concerns. Failure to have annual votes could make directors subject to “no” or “withhold” votes for pay practices not favored by investors.</td></tr>
<tr><td colspan="4">Federal Reserve Monetary Policy and Authorities</td></tr>
<tr><td>VII</td><td>Taylor Rules</td><td>Would require the FOMC to establish so-called Taylor Rules that would set the FOMC’s target interest rates as a function of changes in inflation, output, monetary aggregates or other economic conditions to achieve its dual mandate of stable prices and maximum employment.
After each FOMC meeting, the FOMC would be required to disclose its then-current Taylor Rule (called a Directive Policy Rule) to the House Financial Services Committee, the Senate Banking Committee and the Comptroller General.
Each such Taylor Rule would be required to:
Identify the interest rate it is trying to target;
Describe the strategy or rule for changing that interest rate in response to changes in inflation, output, monetary aggregates or other specified macroeconomic conditions;
Include a function that models the interactive relationship between the specified macroeconomic conditions;
Include the coefficients that generate the current interest rate targets when multiplied by the difference between current and target variables, and a range of predicted future values in response to changes in the macroeconomic conditions;
Describe the procedure for adjusting the supply of bank reserves to achieve the relevant interest rate target;
Include a statement as to whether the rule substantially conforms to a baseline Taylor Rule called the Reference Policy Rule and a justification for any material departure;
Include a certification that the rule is expected to achieve stable prices and full</td><td>The purpose of this provision is to substitute a rule-based approach for determining and implementing interest rate policies that is more transparent and predictable than the more discretionary current approach. The provision would apply to the federal funds rate, the discount rate and the rate on reserve requirements.

The new process would be based on a formula associated with Stanford economist John Taylor. Such Taylor Rules multiply the differences between current and target inflation, output and other measures by chosen weights, with the weights corresponding to sensitivity of monetary policy to the relevant measure. The Reference Policy Rule would be a standardized Taylor Rule with set parameters and inputs.</td></tr>
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		employment over the long term; ▪ Include a calculation of the expected annual inflation rate over a 5-year period; and ▪ Include a plan to use the most accurate data. ▪ The Reference Policy Rule would be a calculation of the federal funds rate equal to the sum of: ▪ The rate of inflation over the previous 4 quarters; ▪ One-half of the difference between the real GDP and an estimate of potential GDP; ▪ One-half of the difference between the rate of inflation over the previous 4 quarters and 2%; and ▪ An assumed real interest rate of 2%. ▪ The Comptroller General would be required to compare each Directive Policy Rule submitted after an FOMC meeting to the most recent previous Directive Policy Rule submitted to it. ▪ If the Directive Policy Rule has changed materially, the Comptroller General would be required to submit a report to the House Financial Services Committee and the Senate Banking Committee as to whether the most recent Directive Policy Rule is in compliance with applicable requirements. ▪ If the Comptroller General decides that a Directive Policy Rule is not in compliance with applicable requirements, the Federal Reserve Chairman would be required to testify to each committee as to why it is not in compliance.	
VII	FOMC Transparency	▪ All FOMC meetings would be recorded and a full transcript of those meetings made available to the public.	While FOMC transcripts are currently released after a 5-year time lag, it happens as a matter of Federal Reserve custom not law. The proposal does not state a time period.
VII	Annual Audit of the Federal Reserve	▪ The Comptroller General would audit the Federal Reserve Board and the Federal Reserve Banks annually and submit a report of its findings to Congress. ▪ Includes an annual audit of all elements of monetary policy deliberations, discussions, decisions and actions taken by the Federal	Subjects the Federal Reserve Board to an annual audit, substantially similar to the Federal Reserve Transparency Act of 2015, H.R. 24, and other prior Republican proposals.

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		Reserve. ▪ The Comptroller General may also make recommendations for legislative or administrative action.	
VII	Centennial Monetary Commission	▪ Would describe the Federal Reserve's original 1913 mandate as consisting of: ▪ A monetary mandate to provide an elastic currency, within the context of the gold standard, in response to seasonal fluctuations in the demand for currency; and ▪ A financial stability mandate to serve as the lender of last resort to solvent but illiquid banks during a financial crisis. ▪ Would state that in 1977 Congress changed the Federal Reserve's monetary mandate to a dual mandate for maximum employment and stable prices. ▪ Would indicate that the Federal Reserve's dual mandate for monetary policy should be reexamined in light of the 2008 global financial crisis and its aftermath. ▪ Would therefore establish a one-year, bipartisan Centennial Monetary Commission to prepare a report for Congress on: ▪ How U.S. monetary policy has affected U.S. output, employment, prices and financial stability since the Federal Reserve was created in 1913; ▪ The use of various processes for conducting monetary policy; ▪ The use of macro-prudential supervision and regulation as a tool of monetary policy; ▪ The use of lender-of-last resort powers as a tool of monetary policy; ▪ A recommended course of action for future U.S. monetary policy; and ▪ The effects the Federal Reserve's dual mandate to promote price stability and full employment.	Modeled on the National Monetary Commission, which Congress established after the 1907 financial panic and resulted in the formation of the Federal Reserve in 1913. Creates a Commission charged with examining the role of the Federal Reserve as a central bank.
II.A	Federal Reserve Supervision of BHCs	▪ Would repeal the Federal Reserve's authority, pursuant to a recommendation by FSOC, to increase the asset threshold for the application of EPS. ▪ Would remove the requirement that EPS for	Most provisions of Section 165 of the Dodd-Frank Act with respect to large BHCs would be unchanged, other than for QBOs exempted from EPS under Title I of the Financial CHOICE Act.

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		FBOs take into account the extent to which the FBO is subject to home country standards comparable to U.S. standards. ▪ Would require the Federal Reserve to establish stress testing scenarios through notice-and-comment rulemaking. ▪ Would repeal the Federal Reserve's authority to prescribe, in coordination with FSOC and the FDIC, requirements for the early remediation of large BHCs.	Notably, would not increase from \$50 billion to \$250 billion, or otherwise alter, the threshold for D-SIB designation. The use of notice-and-comment rulemaking to establish stress testing scenarios would: ▪ Permit BHCs, as well as academics, activists and other interested parties who might argue for assumptions that are more severely adverse than those proposed by the Federal Reserve, to provide feedback on proposed scenarios; and ▪ Subject the process of scenario development to new avenues of legal challenge (e.g., whether adequate notice was provided if the final rule differs significantly from the proposed rule, whether all significant comments were considered). Would retain the capital floor requirements under the Collins Amendment, which: (i) prevent the federal banking agencies from reducing risk-based capital and leverage requirements below the levels in effect at the time the Dodd-Frank Act was enacted; and (ii) as implemented by the federal banking agencies, require certain large and complex banking organizations to comply with the greater of risk-based capital and leverage requirements calculated using both advanced approaches and the standardized approach. Would retain the prior notice requirement for acquisitions by large BHCs of companies engaged in Section 4(k) financial activities with assets of \$10 billion or more, except that the financial stability factor would not be considered for QBOs.

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			Would not include Glass-Steagall-like separations between commercial and investment banking.
II.A	Hotel California Provision	▪ Would repeal the Hotel California provision, pursuant to which large BHCs that received TARP funds would be automatically regulated as nonbank SIFIs upon ceasing to be BHCs.	
		Emergency Powers in a Financial Crisis	
II.D	FDIC Emergency Authorities	▪ Would eliminate the FDIC's authority to establish a widely available guarantee program during times of severe economic distress. ▪ Would repeal the systemic risk exemption to the least-cost test and the prohibition on the use of the Deposit Insurance Fund to cover uninsured deposits or non-deposit obligations, thereby repealing the FDIC's authority to provide assistance to an insured depository institution in receivership in order to avoid or mitigate systemic risks.	This means that the FDIC would not have the authority during a financial crisis to establish a program like the Temporary Liquidity Guarantee Program it established during the 2008 financial crisis without express Congressional approval.

VII	Federal Reserve Powers under Section 13(3) of the Federal Reserve Act	▪ Would further limit the circumstances under which this emergency lending authority could be invoked to circumstances that would "pose a threat to the financial stability of the United States" in addition to those that are "unusual and exigent."
		▪ Would further condition the ability to invoke this authority on the affirmative vote of nine Federal Reserve Bank Presidents, in addition to the affirmative vote of five members of the Federal Reserve Board.
		▪ Would require:
		  ▪ All borrowers to be certified as "not insolvent" as a condition of eligibility;
		  ▪ All loans to be made at a "penalty rate" equal to at least the sum of the discount rate plus the spread for distressed corporate debt; and
		  ▪ Collateral to satisfy certain valuation haircut conditions and to exclude any equity securities issued by the borrower.
			The proposed changes to Section 13(3) would further limit the Federal Reserve's emergency lending powers under Section 13(3) of the Federal Reserve Act. Among other things, they would hardwire Bagehot's conditions for central bank lender-of-last-resort facilities into a statute.

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II.D	U.S. Treasury's Exchange Stabilization Fund	▪ Would bar the use of the Exchange Stabilization Fund to establish a guarantee program for a nongovernmental entity, such as a money market fund.	
Resolution of Financial Institutions			
II.B II.C	New Subchapter V of Chapter 11 of the Bankruptcy Code (also known as New Chapter 14)	▪ Would add a new Subchapter V to Chapter 11 of the Bankruptcy Code, also known as new Chapter 14, to facilitate single-point-of-entry reorganizations for large financial companies. Would be a replacement for the Orderly Liquidation Authority in Title II of the Dodd-Frank Act, which would be repealed. ▪ Includes provisions that would facilitate the speedy transfer of assets to a bridge financial holding company, override cross-default provisions in subsidiary QFCs if certain conditions are satisfied and provide a safe harbor from avoidance actions for transfers of assets to recapitalize those subsidiaries.	This proposal and the pending Senate bill, S. 1840, which would add a new Chapter 14 to the Bankruptcy Code, are substantially similar to the Financial Institution Bankruptcy Act, H.R. 2947, as passed by the House in April 2016. Its provisions would reinforce the effect of the ISDA Protocol on cross-defaults and the secured support agreements and other measures that have been put in place or are being considered in the Title I resolution planning process.
II.A	Living Wills	▪ Would prevent BHCs from being required to submit a Section 165(d) living will more than once every two years. ▪ Would require the Federal Reserve and FDIC to provide feedback on Section 165(d) living wills within six months of submission. ▪ Would require the Federal Reserve and FDIC to publicly disclose the assessment framework used to review Section 165(d) living wills and provide a notice-and-comment period before finalizing such assessment framework.	We believe the living will requirement will be maintained but that these proposals would make the process somewhat less burdensome and substantially more transparent. The FDIC's solo rule for insured depository institution living wills would not be affected because it was enacted under the FDIC's safety and soundness authority, not Section 165(d) of the Dodd-Frank Act.
Capital Formation			
IV.B X.B X.E X.F X.N X.S	Securities Offerings and Related Matters	▪ Would direct the SEC to revise the definition of "general solicitation" in Reg D so that it does not cover advertisements for meetings with issuers sponsored by angel investor groups, venture forums, venture capital associations and certain other entities (as long as the advertisement does not reference a specific securities offering), or apply to the meetings themselves, as long as only specified information about the issuers' securities offerings is presented at the meetings.	These provisions would make various adjustments to ease particular burdens in connection with securities offerings, prevent the SEC from imposing certain new burdens that it has proposed and expand the availability of existing exemptions from securities registration requirements.

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		▪ Would forbid the SEC from requiring the filing of general solicitation materials in a Reg D offering. Would forbid the SEC from applying the sales literature rules that apply to mutual funds to private funds. Would require the SEC to add "knowledgeable employees" of private funds to the list of accredited investors who may invest in their funds. ▪ Would repeal the Dodd-Frank mandate that may have caused the SEC to increase the dollar thresholds for accredited investor status every four years. Would create a new statutory definition of "accredited investor" that would freeze the income test at $200,000 (or $300,000 including spousal income), but would inflation-adjust the net worth test (currently $1 million, excluding primary residence) every five years. ▪ Private companies issuing equity to their employees would be able to issue up to $10 million per year (as opposed to $5 million) before more comprehensive disclosure, including financial statements, must be provided to the recipients. ▪ Would direct the SEC to establish a safe harbor for research reports on ETFs issued by broker-dealers similar to the Rule 139 safe harbor for operating companies. ▪ Would expand Form S-3 eligibility to include any registrant with listed equity securities, even those that do not meet the $75 million minimum float requirement. ▪ Would extend state Blue Sky preemption to any security that is listed on any national securities exchange, or tier or segment thereof, or to any senior security of such a listed security as opposed to granting Blue Sky preemption only to securities (and securities senior thereto) listed on NYSE, Amex and Nasdaq and any other national securities exchange whose listing standards are deemed by the SEC to be substantially similar to NYSE, Amex and Nasdaq.	

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IV.B	Credit Ratings in Prospectuses	▪ Would reinstate Securities Act Rule 436(g) and therefore allow an issuer to include a security rating from a credit rating agency in a prospectus for that security, without filing with the SEC a consent of the credit rating agency (which no credit rating agency will typically provide due to the resulting statutory liability).	
IV.B	Conflict Minerals Disclosure	▪ Would repeal conflict minerals, resource extraction and mine safety disclosure requirements.	
IV.B	Corporate Governance	▪ Would repeal Dodd-Frank authority for the SEC to issue proxy access rules. ▪ Would repeal requirement for SEC proxy disclosure rules on whether and why the same or different persons serve as Chairman and CEO of an issuer.	Shareholder proposals and investor pressure may cause companies to adopt proxy access bylaws without legislation or regulation; this would be expected to continue.
X.C X.I X.J X.L X.M X.P	Smaller Issuer Capital Markets Reforms	▪ Would exempt emerging growth companies and temporarily exempts companies with less than $250 million in gross revenues from the SEC's xBRL rules. ▪ Would extend the Sarbanes-Oxley Section 404(b) exemption for a company that loses emerging growth company status after five years if its average gross revenues over the preceding three years are less than $50 million, until the earlier of average gross revenues exceeding $50 million and 10 years from its IPO. ▪ Would require the SEC to review the findings and recommendations of the existing Annual Government-Business Forum on Small Business Capital Formation, assess the findings and recommendations and disclose the actions, if any, it intends to take based on the findings and recommendations. ▪ Would provide for the creation of "venture exchanges" that may list smaller issuers and exempts such exchanges from certain requirements applicable to other national securities exchanges, including Regulation NMS and Regulation ATS, or any requirement to use decimal pricing increments. ▪ Would exempt from Securities Act registration and state Blue Sky laws certain "micro-offerings" of securities (less than $500,000 in a 12-month period) made to 35 or fewer purchasers having a	These provisions would attempt to promote capital formation by smaller issuers, such as by expanding the availability of exemptions adopted under the JOBS Act, creating additional small offering exemptions from securities registration and facilitating new forms of secondary market liquidity through venture exchanges.

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		pre-existing relationship with the issuer. ▪ Would relax certain restrictions under the crowdfunding provisions of the JOBS Act.	
IV.B	Securitization Risk Retention Rules	▪ Would remove risk retention for non-residential mortgage securitizations.	Would result in only non-qualified residential mortgage securitizations, as defined in regulations, being subject to the risk retention requirements.
X.A	M&A Broker-Dealer Registration	▪ Would exempt from broker-dealer registration certain merger and acquisition brokers intermediating the sales of privately-held small- and medium-sized companies.	Adoption may have limited impact, as the SEC staff has previously issued a no-action letter, which coincided with Congress considering a prior version of this legislation, that provides similar relief, although with slightly different conditions. The no-action letter in some ways provides broader relief, in that it is available without regard to the size of the M&A target.
X.Q	Proxy Advisory Firms	▪ Would require proxy advisory firms to register with and be subject to regulation by the SEC.	Institutional Shareholder Services (ISS), the largest proxy advisory firm, is already registered with the SEC as an investment adviser.
FSOC Reforms			
II.A	OFR	▪ Complete repeal.	
II.A	FSOC Authority and Other Regulatory Authorities over Nonbank SIFIs	▪ Would repeal FSOC's authority to designate nonbank financial companies as nonbank SIFIs and related regulatory authorities (e.g., Federal Reserve regulatory and oversight authority over nonbank SIFIs). ▪ Would repeal FSOC's authority to recommend enhanced prudential standards and reporting and disclosure requirements for large, interconnected BHCs. ▪ Would repeal FSOC's authority to identify systemically important financial market utilities and payment, clearing and settlement activities. ▪ Would repeal FSOC's authority to issue recommendations to primary financial regulatory agencies to apply new or heightened standards to activities determined to have adverse impacts	Companies currently designated as nonbank SIFIs would shed that status and no longer be subject to Federal Reserve oversight, EPS and other consequences of being designated as nonbank SIFIs. Would turn FSOC into an interagency forum for monitoring financial stability, financial regulatory proposals and market developments, information-sharing, research, discussion and congressional reporting. FSOC would retain authority to collect information from BHCs and nonbank financial companies and make recommendations to

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		on U.S. financial markets (i.e., systemically important activities). ▪ Would repeal FSOC's authority to impose restrictions on or require divestitures by large BHCs determined to pose a grave threat to financial stability (also known as the Kanjorski Amendment).	member agencies. The Chairperson of FSOC would remain obligated to periodically carry out a study of the economic impact of financial services regulatory limitations intended to reduce systemic risk and report to Congress.
II.A	FSOC: Membership, Governance and Oversight	▪ Would change FSOC membership to include all members of multimember agencies, with one vote per agency. ▪ Would enhance the ability of Congress to exercise oversight over FSOC, including by permitting members of the House Financial Services Committee and Senate Banking Committee to attend all meetings. ▪ FSOC would become subject to the Sunshine Act. ▪ Would replace FSOC's funding from the OFR budget with a flat $4 million annual appropriation.	The inclusion of all members of multimember agencies would: ▪ Significantly expand FSOC's membership, particularly in light of a separate provision of the Financial CHOICE Act that would transform the FHFA, NCUA and OCC into multimember agencies headed by five-member boards of directors; ▪ Allow minority party members to voice objections and concerns; and ▪ Decrease the influence of the agencies' chairs. Would not alter which financial regulatory agencies are represented on FSOC. GAO would retain authority to audit FSOC activities.
II.E	SIFMU Designation	▪ Complete repeal.	As a result, access to the Federal Reserve's discount window would be eliminated.
V	Insurance	▪ Would establish a new Independent Insurance Advocate within Treasury, which would consolidate and replace FSOC's independent member with insurance expertise and Treasury's Federal Insurance Office. ▪ Would require Treasury and the U.S. Trade Representative to publish for comment proposed agreements with non-U.S. authorities concerning prudential measures involving insurance or reinsurance.	FSOC would continue to have a designated voting member with insurance expertise.

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SEC and CFTC Regulation and Structural Reforms			
IV.C IV.D	OTC Derivatives	▪ Would require the CFTC and SEC to harmonize Title VII derivatives rules. ▪ Would require the CFTC to engage in Title VII cross-border rulemaking and pursue substituted compliance with non-U.S. regimes.	While the Dodd-Frank Act statutory derivatives reforms would remain intact, the harmonization and rulemaking requirements may result in substantive changes to Title VII regulations.
IV.B X.H X.O	Investment Advisers and Investment Companies	▪ Would require the SEC to exempt advisers to PE funds from Advisers Act registration and reporting. ▪ Would eliminate FSOC's authority to obtain Form PF filings from the SEC and the requirement for the SEC to consult with FSOC. ▪ Would amend Section 3(c)(1) of the Investment Company Act to permit qualifying venture capital funds beneficially owned by no more than 250 persons (up from 100) to qualify for the 3(c)(1) exemption. ▪ Would reform regulation of business development companies with respect to permissible holdings and proxy and offering rules.	Would ease registration and regulatory requirements for limited types of investment advisers and investment funds and would refocus Form PF on investor protection and away from systemic risk considerations.
IV.B	Credit Rating Agencies / NRSROs	▪ Would give the SEC authority to exempt a credit rating agency from any Exchange Act or SEC NRSRO regulatory requirement upon a determination that requirement creates a barrier to entry or impedes competition among NRSROs.	Responds to criticisms that current NRSRO regulatory model is anti-competitive.
IV.A IV.C	SEC and CFTC Regulation and Rulemaking Process	▪ APA requirements would apply to all SEC and CFTC policy statements, guidance, interpretive rules or other procedural rules that have the ultimate effect of law. ▪ Would require the SEC and CFTC to develop comprehensive internal risk controls to safeguard and govern the storage of market data. ▪ Would permit lawsuits against the CFTC to be brought to the Court of Appeals of the District of Columbia, not only to the District Court of the District of Columbia.	Query whether the new Administration would want the requirements of the Administrative Procedures Act to apply.
IV.A	SEC Organizational	▪ Would require the SEC to implement results of 2011 Boston Consulting Group (BCG) re-	Would require the SEC to engage in systematic and potentially

<table>
<tr><th>Title</th><th>Topic</th><th>Major Proposed Changes</th><th>Commentary and Analysis</th></tr>
<tr><td>X.G</td><td>Changes</td><td>organization study.
▪ Would restructure Office of Credit Ratings and Office of Municipal Securities to report to Director of Division of Trading and Markets, rather than SEC Chair.
▪ Would prohibit the Investor Advocate from taking a position on any legislation, other than legislation proposed by the Investor Advocate.
▪ Would provide that the Investor Advocate Ombudsman would be appointed by, and would report to, the Commission rather than the head of the Investor Advocate office.
▪ Would establish a small business advocate and small business capital advisory committee to assist small businesses in capital formation by reviewing SEC and self-regulatory organization regulations for areas of concern and improvement.</td><td>significant organizational restructuring.</td></tr>
<tr><td>IV.A
X.D</td><td>SEC Budget</td><td>▪ Would provide for five years of SEC appropriations.
▪ Would eliminate the SEC reserve fund.
▪ Would require the SEC, upon notice from FINRA or a national securities exchange, to credit back any overpayments of Section 31 transaction fees that were paid to the SEC.
▪ Would require the SEC to deposit as general revenue of the Treasury certain fees that have been collected by the SEC in excess of the amount provided in appropriation Acts for the fiscal year.</td><td>Generally would provide for greater Congressional constraints on SEC funding.</td></tr>
<tr><td colspan="4">Enforcement Reforms</td></tr>
<tr><td>IV.A
IV.C</td><td>SEC Enforcement</td><td>▪ Would increase Congressional and other oversight over SEC enforcement activities.
  ▪ Would require annual reports to Congress on enforcement priorities.
  ▪ Would create Enforcement Ombudsman who reports to Congress.
  ▪ Would require the SEC Division of Enforcement to publish its enforcement manual online.
▪ Would limit authority and toolbox of Enforcement Division.</td><td>These provisions would generally decrease the authority of SEC enforcement staff and require greater oversight of enforcement activities by the Commission and Congress.</td></tr>
</table>

Title	Topic	Major Proposed Changes	Commentary and Analysis
		▪ Would permit a respondent to require the SEC to terminate any administrative proceeding and authorizes the SEC to instead bring a civil action in court. ▪ Would repeal SEC authority to impose D&O bars. ▪ Would limit the duration of subpoenas and would require Commission renewal (an analogous provision applies to the CFTC). ▪ Would require SEC process for timely closing of investigations. ▪ Would require the SEC to establish a process to verify that enforcement actions are within SEC authority and consistent with the APA. ▪ Would provide potential defendants / respondents access to Commissioners at the Wells process stage (before the matter is formally considered by the Commission). ▪ Would eliminate certain automatic disqualifications triggered by SEC and various enforcement actions. ▪ Would appear to require the SEC to consider the economic consequences of imposing a civil money penalty on an issuer, including whether the alleged violation resulted in direct economic benefit to the issuer and the penalty would harm the shareholders of the issuer.	

VIII	Increased Monetary Penalties	▪ Would increase maximum statutory penalties that can be assessed:
		  ▪ For various violations of the federal securities laws;
		  ▪ For violations of various provisions of the federal banking laws;
		  ▪ For certain violations of the FCPA;
		  ▪ In PCAOB actions; and
		  ▪ Against controlling persons in connection with insider trading.
		▪ Would increase third-tier SEC penalties. The SEC would be allowed to impose a penalty equal to the greatest of:
		  ▪ An increased statutory cap;
		  ▪ Three times the gross amount of pecuniary gain to the person who committed the act or omission; and
		  ▪ The amount of losses incurred by victims as a result of the act or omission.
			Third-tier SEC civil penalties are currently limited to the greater of a statutory cap or the gross amount of pecuniary gain to the person who committed the act or omission (without tripling).

Title	Topic	Major Proposed Changes	Commentary and Analysis
		▪ Would add a fourth tier for SEC penalties to impose treble damages on recidivists.	
Oversight of and Restrictions on Agency Action			

VI.A	Cost-Benefit Analysis	▪ The Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA would be required to perform a cost-benefit analysis of all proposed and final rules.
		▪ Proposed and final rules would be required to:
		  ▪ Identify the need for the regulation;
		  ▪ Explain why the private market or other authorities cannot adequately address the problem;
		  ▪ Analyze the adverse impacts to regulated entities, other market participants, economic activity or agency effectiveness;
		  ▪ Include a quantitative and qualitative assessment of all costs and benefits of the regulation, including compliance and regulatory administrative costs, effects on economic activity, job creation, efficiency, competition and capital formation and costs imposed on state, local and tribal governments;
		  ▪ Identify all available alternatives to the regulation and explain why the regulation is superior to these alternatives;
		  ▪ Assess how the burden imposed by the regulation will be distributed among market participants;
		  ▪ Assess whether the regulation is inconsistent with or duplicative of existing domestic or international regulations; and
		  ▪ Describe any studies, surveys or other data relied upon in preparing the analysis.
		▪ If a proposed rule's quantified costs outweigh its quantified benefits, the agency must justify the regulation.
		▪ If a final rule's quantified costs outweigh its quantified benefits, the final rule cannot be published unless Congress directs the agency to finalize the rule.
		▪ Would require a minimum 90-day comment period or an explanation by the agency for why it could not provide 90 days.
			Would subject rulemaking by the independent federal financial agencies to the same sort of, or arguably even more rigorous, cost-benefit analysis currently applicable to executive agencies, except that there would be no monitoring body like the Office of Information and Regulatory Affairs (OIRA) to ensure the quality of such cost-benefit analyses other than Congress itself or the courts.
			
			To the extent that existing regulations are overridden by statute, these cost-benefit requirements would not apply. However, if a new rulemaking is necessary to amend or repeal outstanding rules, such new rulemaking would be subject to these requirements.

Title	Topic	Major Proposed Changes	Commentary and Analysis
		▪ The agencies would be required to submit to Congress periodic analyses of the economic impact of new rules and plans to streamline or repeal preexisting rules. ▪ Any person adversely affected by a final rule issued by one of the agencies would have one year to challenge the agency's compliance with these cost-benefit provisions in the Court of Appeals of the District of Columbia, which could stay the effective date of or vacate challenged rules.	
VI.B	Congressional Review of Federal Financial Agency Rulemaking	▪ Before any rule may take effect, the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA would be required to publish in the Federal Register a list of information, including data and cost-benefit analyses, on which the rule is based, as well as submit to each house of Congress and the Comptroller General a detailed report regarding the rule. ▪ Congress could by joint resolution disapprove any non-major rule, and no major rule could take effect unless Congress enacted a joint resolution approving that rule. A major rule would generally be one that produces $100 million or more in impacts on the U.S. economy.	This proposal is substantially similar to the REINS Act, H.R. 427, which was passed by the House in July 2015. Congressional oversight of all rulemakings issued by the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA could significantly impede the agencies' ability to issue new rules.
VI.C	Scope of Judicial Review of Agency Actions	▪ All actions by the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA would be subject to de novo judicial review on all questions of law, including the interpretation of constitutional and statutory provisions and rules issued by those agencies.	This proposal would effectively undo Chevron deference for statutory interpretations by the Federal Reserve, OCC, FDIC, CFTC, SEC, CFPB, FHFA and NCUA. Chevron deference would remain unaffected for statutory interpretations by other agencies.
VI.D	Leadership of Financial Regulators	▪ Would change the structures of the FHFA, NCUA and OCC so that each agency is headed by a five-member bipartisan board of directors, with all board members appointed by the President. Would change the number of directors of the FDIC that must be appointed by the President from 3 to 5. ▪ Title III of the Financial CHOICE Act would make a similar change to the structure of the CFPB.	
VI.E	Congressional Oversight of	▪ Would subject the FDIC, FHFA, NCUA, OCC and the non-monetary policy functions of the Federal Reserve to the regular Congressional	The functions of the FDIC, FHFA, NCUA and OCC and the non-monetary policy functions of the

Title	Topic	Major Proposed Changes	Commentary and Analysis
	Appropriations	appropriations process.	Federal Reserve would be subject to budget restrictions.
XI	Regulations Appropriate to Business Models	▪ Would require agencies to tailor regulatory action based on risk profiles and business models of institutions in a manner that limits regulatory impact and costs. ▪ Would require agencies to conduct a five-year look-back and revise regulations as appropriate to meet tailoring requirement.	
II.A	International Policy Coordination	▪ Would repeal a provision authorizing the President, FSOC and the Federal Reserve to coordinate and consult with foreign regulators.	
VI.F	International Processes	▪ Before participating in any process of setting financial standards through an international process (e.g., BCBS, FSB or IAIS), the Federal Reserve, FDIC, OCC, Treasury, SEC and CFTC would be required to first consult with the House Financial Services Committee and Senate Banking Committee, follow certain notice and comment procedures and, afterwards, make public a report on the topics discussed.	Negotiation and implementation of international standards such as Basel capital requirements would be subject to prior public notice and comment as well as Congressional consultation. This proposal, together with the approach taken by EU policymakers to reject certain Basel capital standards and the unwillingness of the BCBS to compromise on certain standards, reflect widespread concern over the process for setting international financial standards. The new Administration may decide to participate more lightly in international processes as a policy matter, even without statutory changes.
Other Regulatory Relief			
XI	Residential Mortgages	▪ Would raise thresholds for “high-cost mortgage.” ▪ Would create safe harbors from ability to repay and other requirements for certain residential mortgages. ▪ Would ease certain licensing, disclosure and other requirements for mortgage originators and lenders.	

Title	Topic	Major Proposed Changes	Commentary and Analysis
XI	FFIEC Act	▪ Would allow financial institutions to seek de novo review of a material supervisory determination contained in a final exam report from the independent Director of the Office of Independent Examination Review, newly formed within the FFIEC. The financial institution could petition for judicial review of the Director's final decision.	The current appeals process for material supervisory determinations is solely intra-agency, with no express provision for third-party independent review or escalation to judicial review.
XI	Small Business Loan Data Collection	▪ Would repeal requirement that financial institutions collect and report information regarding credit applications made by women-owned, minority-owned and small businesses.	
XI	Federal Savings Associations	▪ Would permit a federal savings association to elect to operate as a "covered savings association" with the same powers as a national bank, but treated as a federal savings association for certain matters (such as corporate governance).	This is designed to put covered savings associations on an equal footing with national banks.
III.C	Fannie Mae and Freddie Mac Conservator-ship	▪ Would direct the Secretary of the Treasury to conduct annual studies on ending the conservatorship of Fannie Mae and Freddie Mac.	
IX	Repeal of Certain Dodd-Frank Act Title VI Provisions	▪ A complete repeal of those provisions in Title VI of the Dodd-Frank Act related to: ▪ Section 603 – Moratorium on FDIC deposit insurance for ILCs and study on credit card banks, industrial banks, and similar companies (the study and report were issued in 2012 and by statute the moratorium sunset in 2013); ▪ Section 618 – Securities holding company oversight; ▪ Section 620 – Study of and report on bank investment activities (the study and report were issued in 2016); and ▪ Section 621 – SEC conflict of interest rule for securitizations.	Other provisions of Title VI of the Dodd-Frank Act would remain unchanged, including those regarding treatment of credit exposure from derivatives in Section 608 (affiliate transaction restrictions and revisions to Section 23A of the Federal Reserve Act) and Section 610 (national bank lending limits).

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

Capital Markets		
Joseph A. Hall	**212 450 4565**	**joseph.hall@davispolk.com**
Enforcement and Litigation		
Linda Chatman Thomsen	**202 962 7125** **212 450 4403**	**linda.thomsen@davispolk.com**
Executive Compensation		
Kyoko Takahashi Lin	**212 450 4706**	**kyoko.lin@davispolk.com**
Jean M. McLoughlin	**212 450 4416**	**jean.mcloughlin@davispolk.com**
Financial Regulatory		
Luigi L. De Ghenghi	**212 450 4296**	**luigi.deghenghi@davispolk.com**
Jeffrey T. Dinwoodie	**202 962 7132**	**jeffrey.dinwoodie@davispolk.com**
John L. Douglas	**202 962 7126** **212 450 4145**	**john.douglas@davispolk.com**
Randall D. Guynn	**212 450 4239**	**randall.guynn@davispolk.com**
Alison M. Hashmall	**212 450 4681**	**alison.hashmall@davispolk.com**
Jai R. Massari	**202 962 7062**	**jai.massari@davispolk.com**
Annette L. Nazareth	**202 962 7075** **212 450 4804**	**annette.nazareth@davispolk.com**
Christopher M. Paridon	**202 962 7135**	**chris.paridon@davispolk.com**
Thomas J. Reid	**212 450 4233**	**tom.reid@davispolk.com**
John B. Reynolds, III	**202 962 7143** **212 450 4080**	**john.reynolds@davispolk.com**
Gabriel D. Rosenberg	**212 450 4537**	**gabriel.rosenberg@davispolk.com**
Lanny A. Schwartz	**212 450 4174**	**lanny.schwartz@davispolk.com**
Margaret E. Tahyar	**212 450 4379**	**margaret.tahyar@davispolk.com**
Erika D. White	**212 450 4183**	**erika.white@davispolk.com**
Zachary J. Zweihorn	**202 962 7136**	**zachary.zweihorn@davispolk.com**
Investment Management		
Nora M. Jordan	**212 450 4684**	**nora.jordan@davispolk.com**