

New in RegTech:

As Gensler Departs, Here's What a Second Trump Term Means for Investment Firms

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Welcome to this First Anniversary edition of the [RegTech Report](#). How things can change in just 12 months! From major new reporting frameworks, to the rise of AI and other technologies, to sustainability disclosure milestones, to impactful legal and political developments... investment firms have had to adjust constantly.

Along the way, we hope to have provided you with useful analysis: going beyond a parroting of recent events, to provide insights about what lies ahead three, six, 12 months down the road and beyond. We thank you for reading, and we look forward to continuing to help you address – and anticipate – your compliance and operational challenges.

In this edition, we focus on the biggest story of the year – the election of Donald Trump – and what it means for investment firms.

It's no secret that the November 5th election of Donald Trump as President for a second term – buttressed by a Republican majority in both chambers of Congress – should bring major changes, including for regulation in the U.S. financial sector. How will this happen, and what should investment firms expect?

Reshaping the administrative state

Already during his first term, Trump adopted a deregulatory approach for federal agencies generally. For example by issuing [an Executive Order](#) requiring that agencies eliminate two regulations for every one they issue. At the time, the conservative think-tank The Heritage Foundation [boasted](#) that, within just his first year in office, Trump embraced two-thirds of its 334 policy recommendations (across many areas entailing the reduction of regulatory burden).

This time around, Trump could go much further. He has super-sized his two-for-one regulation cutting pledge, to [ten-for-one](#). As for the Heritage Foundation, its blueprint for Trump's second term, [Project 2025](#), became so controversial that Trump himself claimed to be unaware of it. Aside from its well-known flashpoints – like abolishing the Department of Education, mass deportations of illegal immigrants, and criminalizing the viewing of pornography – Project 2025's plans include the following for financial regulation:

- ▶ Abolishing FINRA, folding it into the SEC
- ▶ Abolishing the SEC's rule on corporate climate change disclosures
- ▶ Prohibiting SEC staff (i.e., non-Commissioners) from initiating enforcement proceedings
- ▶ Placing a two-year time limit on the duration of SEC investigations
- ▶ At the CFTC, placing more decision-making power with its Commissioners
- ▶ Eliminating the CFTC's federal position limits rule

That is [but a small sampling](#) of what could develop, once Trump takes office on January 20th, 2025. Another think-tank, created by Trump insiders upon his 2020 election defeat, is the America First Policy Institute (AFPI), reported to have prepared scores [or even hundreds](#) of Executive Orders ready for Trump's signature. While less public than the Heritage Foundation about its specific policy prescriptions, AFPI is clear about its aim to ["dismantle the administrative state"](#), and is now considered to be [the more influential group](#) driving Trump's second term agenda.

Pending SEC regulation

SEC Chair Gary Gensler (who is also one of the five SEC Commissioners) [has announced his resignation](#), and will depart the SEC on January 20th, 2025. That paves the way for a new Commissioner to be named by Trump, and therefore a 3-2 Republican majority slate of Commissioners at the SEC. Meanwhile the new Chair, who will exercise significant power in setting the SEC's rulemaking agenda, will be named by Trump as well, and could be one of the current sitting Republican-appointed Commissioners ([Hester Peirce](#) or [Mark Uyeda](#), either of whom could also be named as a temporary acting Chair), or else an outside choice. [Rob Stebbins](#), [Dan Gallagher](#), [Paul Atkins](#) and [Brad Bondi](#) are among the various outside names being floated.

Regardless of who will fill the Chair, it's expected that the President-elect upon taking office will recommend to the SEC, and to other independent agencies like the CFTC, that they postpone or withdraw their pending rules (including those that have been published but not yet hit their effective dates). While there are Constitutional limitations to a President's ability to force independent agencies to take such measures, a majority-Republican slate of Commissioners would facilitate such aims. (And of course several of the [pending SEC rules](#), addressing for example ESG disclosures, outsourcing, and conflicts of interest in the use of AI and predictive data analytics, have been frequent targets of criticism from the incoming administration and industry groups.)

Existing regulation

Agency power

For existing rules, that have been already adopted through the notice and comment process and gone into effect, generally agencies may eliminate them only by again undertaking full notice and comment procedures, which can take several months or longer. The SEC may well go through these motions, to the extent it sees elimination of a rule as important enough. Meanwhile other types of agency rules, that have been adopted through more informal procedures (such as interpretations and guidance), can be withdrawn more easily, through the use of similar informal procedures.

Congressional power

Regulations that are in effect, but that have been more recently adopted, present another option for elimination. As we examined in our [March edition](#), the Congressional Review Act (CRA) will permit a simple majority of each house of Congress to overturn them, with the President's signature. Under CRA procedures, "recently" means that no more than 60 congressional in-session days have passed since a regulation was published or submitted to Congress (using the later date). Whenever a new Congress begins (as the Republican-majority 119th Congress will, on 3 January 2025), the CRA grants that new Congress another 60 legislative days to review those recent regulations (such new period beginning on the 15th legislative day of that new Congress).

When counting 60 congressional days in-session for the latter part of 2024, we find that any regulations submitted to Congress after approximately 1 August 2024 are subject to being repealed by simple majority votes in the next Congress. To see which regulations across all federal agencies are vulnerable, consult the handy [CRA Window Exploratory Dashboard](#)

Note on the CRA's 2024 lookback window

The exact date, after which a rule's publication or delivery to Congress subjects it to being overturned, will depend on how many in-session days will elapse before the current 118th Congress ends (which will happen at the latest on 3 January 2025). Interestingly, "pro forma" legislative sessions that can last mere seconds, and by design are skipped by the vast majority of Congress, count as in-session days under the CRA's complex provisions. Often used to keep Congress from technically being in recess, pro forma sessions have increased in recent years. (Most earlier estimates of the final 2024 date for CRA-proof regulations had not considered these pro-forma session days, and hence incorrectly predicted that date to be sometime in May instead of August.) Sarah Hay at GW's Regulatory Studies Center has recently posted a [superb analysis](#) of how the key date should be determined.

As for the SEC, apart from purely technical prescriptions the following measures were issued by it after August 1st, exposing them to the possibility of elimination under the CRA:

- ▶ Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk
- ▶ Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders
- ▶ Covered Clearing Agency Resilience and Recovery and Wind-Down Plans

Other tools

There are additional means for reversal of an agency's prior measures, depending on the circumstances. For a final rule undergoing court challenges (like the SEC's [Rule 13f-2](#) requiring short position disclosures), a newly led agency that no longer supports the rule can retreat in its legal defense of it. For example by settling the case on preferred terms, or by refraining from appealing any negative court rulings.

For pending enforcement actions, the agency might simply choose to dismiss them. (As could happen with the SEC's [outstanding cases](#) against dealers of crypto assets, which the agency currently views as "securities" – a view that [may not survive](#) beyond Gensler's term as a Commissioner.)

For an excellent run-through of the various deregulatory devices that may come into play, see Gibson Dunn's recent [analysis](#).

Takeaways

In the absence of certainties about what exactly will unfold, investment firms can nevertheless expect some relief from the introduction of onerous new financial rules in the US, and possibly the end of some existing ones. (As markets in large measure [cheer the election results](#), seeing the potential for business-friendly policies to drive more profits.)

Regulatory change in any direction requires monitoring, compliance adjustments and flexibility. From a competitive standpoint, successful back and middle office functions positioned to efficiently handle new regulations, are likewise able to quickly take advantage of what deregulation may offer their firm. In either scenario, adapting to change efficiently should be a key overriding strategy.

Moreover, as we [have previously noted](#) with respect to the SEC's Private Fund Adviser Rule that was subsequently vacated, investor demand for actionable information – data that will become more prevalent and useful as the relevant technologies continue to advance at a significant pace – should grow regardless of the regulatory environment. Firms that can tell investors more of what they want to know (and even what they don't know they want to know) are competitively positioned to attract and retain clients. This is a characteristic of the industry quite insulated from political or regulatory developments.

As for firms exposed to global markets, they should continue to encounter regulatory challenges, particularly in Europe where market fragmentation, continuing non-financial priorities and local regulatory imperatives demand robust and efficient compliance and operations teams. (EU influencers like Mario Draghi, in fact, [readily acknowledge](#) this state-of-affairs, and propose to remedy it with streamlined, pan-EU vehicles to encourage more investment. But any such relief will take years to implement, and of course confront the political priorities of 27 different Member States.)

A strategic, competitively oriented view, therefore, still calls for investment in efficient compliance processes, regulatory expertise, data gathering and analysis, and technology. For now that is about the only certainty firms can rely on, as a new force prepares to lead the US government and chart a new course.

About Confluence

Confluence is a leading global technology solutions provider committed to helping the investment management industry solve complex data challenges across the front, middle, and back offices. From data-driven portfolio analytics to compliance and regulatory solutions, including investment insights and research, Confluence invests in the latest technology to meet the evolving needs of asset managers, asset owners, asset servicers, and asset allocators to provide best-of-breed solutions that deliver maximum scalability, speed, and flexibility, while reducing risk and increasing efficiency. Headquartered in Pittsburgh, PA, with ~700 employees in 15 offices across the United Kingdom, Europe, North America, South Africa, and Australia, Confluence services over 1000 clients in more than 40 countries. For more information, visit confluence.com

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