2025 Insights

Skadden

A First Look at Trump's Second Term

As we step into a new year, the potential shifts under a second Trump administration loom large. Our *2025 Insights* publication analyzes the impacts these changes could have on both U.S. and global business environments, including on dealmaking, regulatory scrutiny and enforcement actions. The ability to adeptly navigate these evolving areas will be critical for success in the year ahead.

As always, we welcome your feedback and questions.

Jeremy London / Executive Partner

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The Deal Landscape

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Resilient Economy and Promises of Lessened Regulation, Lower Taxes Raise Hopes for a Surge in M&A

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Key Points

- Pro-growth policies and reduced regulation could create significant opportunities for increased M&A in 2025.
- Lower interest rates, moderating inflation and rising stock market valuations may also encourage strategic buyers and financial sponsors to pursue acquisitions.
- Sectors expected to benefit most from Trump administration policies include energy, digital currencies, industrials, financial services, AI/technology and health care/life sciences.
- Despite market observers' optimism and the positive forces supporting M&A, dealmakers will need to consider the potential impact of increased tariffs, the possibility of persistent inflation and slower economic growth, and of interest rates remaining higher for longer.

Domestic and global M&A transaction activity remained strong in 2024, supported by a 17% increase, by value, in megadeals (*i.e.*, deals over $5 billion), despite the headwinds M&A market participants faced — interest rates that remained relatively high, continued inflation, intense regulatory scrutiny of deals in the U.S. and internationally, geopolitical conflicts and the uncertainty of the U.S. election.

Global M&A in 2024 registered a 10% increase in deal value, while deal count fell by 14% from 2023.

Similarly, U.S. M&A featured a 5% increase in deal value and an 18% decrease in deal count from 2023.[1]

The odds are good that activity will gain momentum, based on President-elect Donald Trump's election platform of adopting a pro-growth agenda, reducing regulation and accelerating domestic production and business expansion. Coupled with other improving macroeconomic and geopolitical trends, these policies should support more M&A dealmaking in 2025.

1 All data is from LSEG Data & Analytics' Global Mergers & Acquisitions Review for the Full Year 2024.

Antitrust

Many dealmakers are particularly eager for the Trump administration to relax antitrust enforcement, which could provide greater confidence that transactions can get done after four years in which Biden administration officials pressed expansive interpretations of antitrust laws and were willing to challenge mergers based on untested theories and new types of harms.

M&A practitioners are anticipating a decrease in the so-called "merger tax" resulting from the time and expense of going through prolonged antitrust reviews. A return to reviews focused on measurable competitive impact could encourage combinations that companies had been reluctant to pursue under the Biden administration. (See "Keep Your Seatbelts Fastened: The Wild Antitrust Ride May Not Be Over.")

It should be noted, though, that even if the merger review process is more predictable, other aspects of antitrust enforcement may not change substantially under the second Trump administration. Populist rhetoric and anti-big tech sentiment may result in the continuation of some of the monopolization cases, such as the ongoing enforcement action centering on Google search (which was initiated under the first

Trump administration) and the action against Meta to divest its Instagram and WhatsApp platforms.

National Security

We expect that cross-border M&A activity will continue to be an important part of the M&A landscape in 2025. However, dealmakers can expect to see continued scrutiny by the Committee on Foreign Investment in the United States (CFIUS) of purchases of U.S. targets by acquirers from rival nations, such as China, or from other countries where the industry is of particular national interest.

In response to enhanced CFIUS enforcement, and also possibly in response to steep new tariffs in the U.S. if those are imposed, other countries could conduct tougher foreign investment reviews, potentially impeding cross-border transactions. Companies considering such deals will need to plan carefully for foreign investment scrutiny. (See "In the US and Europe, Export and Import Controls May Be Expanded" and "China Merger Control Process Should Remain Navigable Even if Tensions Rise.")

Trade Policy

The president-elect made tariffs and other protectionist policies central in his campaign, and, since the election, has continued his threats to deploy significant tariffs on imports.

Stiff tariffs could incentivize U.S. companies to divest non-U.S. operations and/or modify their supply chains. They may also prompt non-U.S. companies to consider making acquisitions in the U.S. or move some of their manufacturing operations there. In any event, acquirers of companies with significant manufacturing or sourcing from outside the U.S. may want to consider the potential impact of the tariffs on the target's earnings and profitability.

Dealmakers, however, should also be cognizant of the possibility that higher tariffs in the U.S. could provoke other countries to impose higher tariffs on U.S. goods, which could lead to a global trade war that could have a chilling effect on overall deal activity. (See "Decoding Tariff Threats: What Importers Can Expect on Day 1 and Beyond.")

Taxes

During his first term, in 2017, President-elect Trump signed the Tax Cuts and Jobs Act (TCJA), which, among other things, lowered the corporate tax rate to 21%, largely left undisturbed the taxation of carried interests with respect to real estate and decreased rates for individual tax brackets. In his 2024 campaign, President-elect Trump stated his desire to make permanent many of the provisions of the TCJA that expire at the end of 2025 and proposed further cutting the corporate tax rate to 15%. (See "Possible Tax Reforms Could Run Up Against Deficit and Debt Concerns.")

These moves would require approval by Congress and might face opposition from deficit hawks. But extending the TCJA cuts or enacting similar tax policies would likely promote M&A activity and incentivize domestic investment.

Favorable Macroeconomic and Geopolitical Conditions

In addition to the new administration's policies, improving macroeconomic and geopolitical conditions — including lower interest rates, higher stock market valuations and lower inflation — could bolster M&A activity in 2025. Any resolution of major international conflicts could add an extra lift.

If the Federal Reserve continues its interest rate cuts, that would decrease the cost of acquisition financing and improve returns on investment. In particular, lower rates could spur dealmaking by private equity funds that continue to have significant amounts of uncalled capital, or "dry powder," to deploy and have been constrained during the higher interest rate environment of 2023 and 2024.

Rising stock market valuations could also inspire greater confidence in the boardrooms and C-suites of corporate buyers to pursue acquisitions as a means to grow their businesses. We might therefore see greater use of stock consideration by such buyers.

As market valuations increase, we may see a narrowing of the valuation gap that hindered some transactions in 2024. Sellers — including financial sponsors that have held assets longer than planned — may take the opportunity to sell, providing another stream of deals.

Sectors Positioned To Benefit Most

President-elect Trump's second term might benefit certain sectors more than others and lead companies within such sectors to more aggressively pursue growth opportunities.

- **Energy.** President-elect Trump campaigned on promoting fossil fuel development, including permitting oil and gas companies to drill on federal land, reducing the amount of time to approve drilling permits and increasing fracking levels. The combination of decreased regulation and possible increased energy demand with a growing economy over the next four years positions the energy sector — and in particular oil and gas — to grow under the new administration. However, deal participants will need to consider that investors and some in the industry have opposed increased production because that could reduce oil and gas prices and returns on investment.
- **Digital currencies.** The expectation of an administration that is friendly to cryptocurrencies has already resulted in a skyrocketing of bitcoin prices and other digital currencies following the election. If these assets gain wider acceptance, we may see increased M&A activity in this sector. (See "Cryptocurrencies Stand To Gain From New Regulators and a Receptive Congress.")

- **Financial services.** Like cryptocurrencies, bank stocks soared after the election, partly on the expectation of lessening financial regulations and lower capital requirements. The result could be more strategic transactions and greater availability of credit for acquirers. We may also see further growth in private credit in the absence of greater regulation. (See "Trump 2.0 Could Mean a More Bank- and Fintech-Friendly Environment.")
- **Industrials.** Loosening regulation and protectionist policies should give a boost to U.S. industrial companies, better positioning them to make acquisitions and making targets more attractive.
- **Artificial intelligence and other technology.** The exponential growth of the artificial intelligence (AI) sector in recent years is expected to continue under the incoming administration as more companies incorporate AI into their growth strategies. President-elect Trump has said he would repeal President Joe Biden's AI executive order and will not look to impose any restrictions on the use of AI in business, which may encourage more dealmaking in the sector. We may also see more M&A transactions in the technology sector more broadly as the largest tech companies seek to divest operations while other tech companies look to consolidate in a less restrictive regulatory environment. (See "US Federal Regulation of AI Is Likely To Be Lighter, but States May Fill the Void.")
- **Health care/life sciences.** While the impact of a Robert F. Kennedy Jr.-led Department of Health and Human Services is difficult to predict, health care and life science companies may pursue strategic acquisitions as a way to maintain their competitiveness and grow their businesses amid the increased scrutiny of health care costs expected under the Trump administration. (See "Drug Pricing and Health Care Fraud Remain Key Issues.")

Potential Risks and Uncertainties Ahead

Despite the overall favorable conditions, dealmakers will need to consider potential risks and uncertainties that could have a disruptive impact on the economic outlook. For example, some economists have warned that tariffs, tighter immigration policies and pro-growth policies may endanger the Fed's hoped-for "soft landing."

Furthermore, the enactment of significant tariffs on imports of goods to the U.S. could provoke a trade war, which in turn might revive inflation. That has the potential to impact earnings growth and dampen transactional activity.

Geopolitical concerns may also continue to chill global M&A activity. While many are hopeful for resolutions of major international conflicts, the wars in Ukraine and the Middle East may continue throughout 2025. Companies considering transactions with counterparties that may be impacted by the conflicts will need to account for this possibility in their planning.

Keep Your Seatbelts Fastened: The Wild Antitrust Ride May Not Be Over

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Key Points

- We expect the second Trump administration to take a relatively aggressive approach to antitrust enforcement, as regulators did during President-elect Trump's first term, because there is bipartisan support for strong enforcement, particularly in areas such as prescription drugs and technology.
- But the merger review process is likely to become more predictable and focus again on consumer welfare factors.
- It is likely that the incoming administration will rescind the revised 2023 Merger Guidelines and withdraw the FTC's near-total ban on noncompetes.
- We expect that the DOJ and FTC will not press to expand the law as Biden officials have, or pursue litigation as actively.

Antitrust enforcement during the first Trump administration was more aggressive than expected for a typical Republican administration, with challenges to vertical mergers and so-called killer acquisitions, monopolization claims and a tough stance on merger remedies.

The Trump Department of Justice's (DOJ) Antitrust Division sued Google for allegedly abusing its monopoly power in general search and text advertising, a case the DOJ recently won. The Trump Federal Trade Commission (FTC) created a permanent Technology Enforcement Division, then sued Facebook to unwind its decade-old acquisitions of Instagram and WhatsApp, a case now headed for trial.

Aggressive enforcement in the technology sector and other industries is expected to continue in the second Trump administration, and, while challenges to mergers will likely persist, President-elect Donald Trump may roll back some of his predecessor's policy moves.

The Biden Administration's Shift to the Left

Over the past four years under President Joe Biden, aggressive enforcement continued, but with a sharp shift to the left on policy as both agencies pushed to assert aggressive and expansive interpretations of legal principles, criticized the consumer welfare standard and favored antitrust to achieve societal goals such as combating income inequality instead of reining in conduct only when it harms competition.

Both the DOJ and FTC sought to frustrate mergers, rescinding early termination under the Hart-Scott-Rodino Act (HSR), preferring to block deals rather than resolve them with remedies, introducing more extensive and intrusive HSR requirements and using the overall investigative process to impose a "merger tax" to deter deals.

Together, the DOJ and FTC rewrote the 2010 Merger Guidelines to lower the bar for blocking mergers, introduce novel theories of harm and deemphasize economics. In a 2022 policy statement, the FTC announced that Section 5 of the FTC Act, which prohibits "unfair methods of competition," reaches beyond conduct prohibited by the Sherman Act and could be used to prevent "coercive, exploitative, collusive, abusive, deceptive, [or] predatory" conduct that "tend[s] to negatively affect competitive conditions."

This interpretation adopted a vague, "we-know-it-when-we-see-it" type approach without a clear legal standard.

Historically, the agency had applied Section 5 together with a Sherman Act claim rather than as a stand-alone case.

> The agencies employed aggressive litigation tactics, took greater litigation risks and lost numerous trials.

Most recently, the Biden FTC used its rulemaking process to attempt to impose a ban on noncompete agreements, widely used for decades to protect businesses. President Biden's DOJ and FTC also filed a raft of "statements of interest" in private antitrust litigations — typically in support of the plaintiffs — to influence the evolution of antitrust doctrine on such issues as information exchanges and algorithmic pricing.

The agencies employed aggressive litigation tactics, took greater litigation risks and lost numerous trials, including those relating to mergers and criminal challenges to alleged no-poach and wage-fixing conspiracies.

But even in some of the losses, they gained acceptance of new legal standards. For example, four federal district courts across four appellate circuits have ruled that no-poach and wage-fixing agreements may be prosecuted criminally. In *Meta/Within*, a federal court agreed with the FTC that in a potential merger challenge, the government could meet the legal standard simply with proof of the acquiring company's capabilities and incentives to enter the market.

The DOJ raised eyebrows for its aggressive tactics when it sued Google for allegedly monopolizing online advertising in the U.S. District Court for the Eastern District of Virginia, nicknamed the "Rocket Docket" because cases there tend to move to trial quickly, and requested a jury trial and damages.

The FTC sued using its administrative process to block the Illumina/Grail merger, lost the trial before the FTC administrative law judge, won a reversal before the commissioners and prevailed after the merging parties abandoned the deal following the U.S. Court of Appeals for the Fifth Circuit remand to the FTC. Prior administrations tended to avoid pursuing deal challenges in the FTC's administrative process in the face of criticism that the agency unfairly played prosecutor, trial judge and court of first appeal.

The Outlook for the Second Trump Administration

Aggressive antitrust enforcement has enjoyed bipartisan support for the past three administrations. Recently, a number of prominent Republicans have expressed approval of FTC Chair Lina Khan's efforts to rein in big corporations in order to lower consumer prices and protect jobs. However, much of the praise from these so-called "Khanservatives" focuses on the consumer protection side of the FTC, which has taken on junk fees and other pricing practices.

President-elect Trump's pick for FTC chair, Andrew Ferguson, has served as a commissioner since April 2024 and dissented on a number of Chair Khan's decisions. He has conservative bona fides, having worked for U.S. Sen. Mitch McConnell, clerked for U.S. Supreme Court Justice Clarence Thomas, and served as solicitor general of Virginia under Gov. Glenn Youngkin.

The president-elect has selected Mark Meador to fill the fifth commissioner seat that will be vacated by Chair Khan. Like Ferguson, Meador has a conservative background, having worked in the Texas attorney general's office and, more recently, on the staff of Utah Republican Sen. Mike Lee. Meador spent time at both the FTC and the DOJ's Antitrust Division, and in private antitrust practice.

> We expect robust enforcement will continue, but with some tempering of the most aggressive Biden antitrust policies.

The pick for assistant attorney general for the DOJ's Antitrust Division, Gail Slater, was an attorney adviser to a Democratic-appointee commissioner at the FTC but also worked for the first Trump administration as an adviser on technology, telecommunications and cybersecurity.

President-elect Trump won the 2024 election with a pronounced populist agenda, and we expect robust enforcement will continue, but with some tempering of the most aggressive Biden antitrust policies. (See "Resilient Economy and Promises of Lessened Regulation, Lower Taxes Raise Hopes for a Surge in M&A.")

First and foremost, the incoming administration likely will repeal the 2023 Merger Guidelines and return to the 2010 version. The Trump administration is expected to be less hostile to mergers and return to more historic norms for evaluating the potential for competitive harm. The agencies likely will once again accept traditional merger remedies and employ more transparent investigative processes.

The administration is also expected to repeal the FTC's rule banning noncompete agreements. For more than 100 years before the rulemaking, state laws governed the validity of noncompete agreements. Returning enforcement to the states is consistent with President-elect Trump's opposition to federal government overreach, and his caution about unorthodox uses of statutory authority is in sync with the U.S. Supreme Court's recent decision overturning *Chevron* deference.

For the same reasons, we do not anticipate seeing the Trump FTC attempt to wield substantive rulemaking power. On

the other hand, business collaborations related to environmental, social and governance (ESG) issues may attract greater scrutiny from Trump antitrust enforcement as potential restraints of trade under Section 1 of the Sherman Act.

Given the president-elect's stated disapproval of climate regulation and ESG efforts, the incoming administration may seek to punish businesses coordinating their ESG efforts as unreasonable restraints of trade. (See "A Significant Shift Away From ESG and Toward Crypto Is Expected at the SEC" and "Some States Prepare for the Expected Rollback of Biden Environmental Regulations.")

The FTC likely will withdraw the 2022 policy statement on Section 5 and revert to the more limited historical approach.

Even so, the incoming administration is likely to continue to pursue claims brought by the Biden administration against the nation's three largest pharmacy benefit managers (PBMs). In September 2024, the FTC brought a stand-alone Section 5 case alleging the PBMs used their economic power to "rig[] pharmaceutical supply chain competition in their favor," resulting in "unfair rebating practices" that increased the cost of insulin.

The cost of insulin has been a political football since the first Trump administration, and the incoming one is more likely to litigate the claims rather than appear to favor big pharmaceutical middlemen over patients. Traditionally, new administrations have continued to prosecute ongoing cases, even if they would not have brought the original complaint. Here, continuing the case is in line with the populist bent of the incoming administration, but it may also create a hard-to-explain conflict with a decision to reject the Biden administration's radical expansion of the scope of Section 5.

Enforcers likely will continue existing cases in the technology sector and launch new ones; after all, the first Trump administration brought the Facebook case and the Google search case. However, the incoming administration likely will be more open to settlements and remedies short of breaking up companies.

(See also "China Merger Control Process Should Remain Navigable Even if Tensions Rise.")

Betting on the ‘Trump Trade’ To Make the Capital Markets Great Again

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Key Points

- The capital markets reacted enthusiastically to the end of election uncertainty, and expectations of lower taxes, less regulation and more business-friendly policies.
- Record-setting equity markets are expected to finally open the IPO window for companies that have been waiting to go public.
- Strong corporate fundamentals remain positives for both investment-grade and high-yield bonds, so long as deficits and inflation do not cause interest rates to rise again.
- A resurgent M&A market, spurred in part by an expected shift in approach in antitrust regulation, would further increase deal flow in both the traditional capital markets and private capital.
- If bank regulations are liberalized, traditional lenders could compete more broadly and aggressively for business that has been going to private capital sources.

The capital markets responded immediately and enthusiastically to Donald Trump’s victory in the 2024 presidential election, and to Republican control of both chambers of Congress.

On the day after the election, the Dow Jones Industrial Average rose over 1,500 points, the first single-day gain of 1,000 points since November 2022. The S&P 500 increased nearly 3%, its best day in almost two years, and the Nasdaq Composite posted a similar increase.

The equity market’s gains celebrated the removal of election uncertainty and reflected market participants’ expectations of an era of lower taxes, less regulation and more business-friendly policies — factors that should help boost corporate earnings and profits, a strong positive for the markets.

The bond market also reacted strongly to the news, but less optimistically. Treasury prices fell and yields significantly increased in anticipation of stronger economic growth, but also because of the potential for increased budget deficits and inflation due to lower tax revenues and the impact of tariffs on prices.

Overall, the markets are betting on increased growth, less red tape and more deals under the Trump administration.

There also are unknowns about the implementation of President-elect Trump’s fiscal policies, including the scale of the tariffs and tax cuts he has promised, and the impact of the proposed tightening of immigration policy. (See “Decoding Tariff Threats: What Importers Can Expect on Day 1 and Beyond” and “Possible Tax Reforms Could Run Up Against Deficit and Debt Concerns.”)

But, overall, the markets are betting on increased growth, less red tape and more deals under the Trump administration. The capital markets also are expecting to benefit from a less aggressive Securities and Exchange Commission (SEC), whose chair, Gary Gensler, will step down on Inauguration Day. (See “A Significant Shift Away From ESG and Toward Crypto Is Expected at the SEC.”)

IPO and Equity Markets

With election uncertainty out of the way, companies considering or preparing for initial public offerings (IPOs) or pre-IPO investment rounds can move forward with greater clarity. Market uncertainty and volatility, combined with lower or misaligned valuations, kept many pre-IPO companies waiting on the sidelines for the last few years. In addition, lingering questions about what the Federal Reserve would do with interest rates have now been answered, with the Fed announcing its final 2024 rate cut in mid-December and indicating that it plans to slow future rate reductions.

Technology companies, in particular, are an area of focus, with the stock prices of several big public tech companies posting substantial post-election increases and the news of President-elect Trump's selection of tech billionaire Elon Musk to co-lead the advisory Department of Government Efficiency (DOGE). However, the tech sector is expected to face headwinds from the Trump administration's anticipated continued scrutiny of Big Tech's competitive landscape, together with proposed tariffs and other trade policies.

Companies will still need to show strong fundamentals, including a path to profitability and sustainable growth, and be realistic as to valuations. As a result, some "unicorns" may choose to remain private as they continue to refine their story, particularly if they have generous later-stage funding and their private investors are not looking for a near-term exit.

In addition, the actual implementation and execution of President-elect Trump's policies could result in market volatility, depending on scope, details and geopolitical reactions. But with strong overall market performance, the IPO window of opportunity appears more positive than it has in several years.

Bond Markets

Companies looking to the bond markets should remain vigilant and opportunistic. Strong pre-tax corporate profits and solid balance sheets (with less debt and more cash), together with the decisive election results, are a positive for both the investment-grade and high-yield bond markets, but interest rates and inflation continue to be top of mind.

The Federal Reserve reduced interest rates by a full percentage point in 2024 and indicated a plan to slow future rate cuts, with only two expected in 2025. However, in the long run, the focus will be less on the recent Fed rate cuts and more on economic data and inflation trends. Inflation still remains above the Fed's 2% goal, but the Fed also is anticipating effects from Trump administration policy changes.

Tax cuts that lead to increased consumer and business spending, combined with the impact of tariffs and immigration policies, could cause prices to rise and, as a result, lead to interest rates remaining static or even increasing again if there is rising inflation. The result could be investors demanding higher yields, particularly on longer-term bonds.

Private Capital

Interest rates, tariffs and regulation also are areas of focus for private credit and other private capital. Higher interest rates make financings more expensive, which could temper the expected deal activity in the M&A market.

However, against the backdrop of an otherwise favorable M&A environment and with many sponsors and investors looking for exits after years of low M&A and IPO activity, market participants may decide to just accept the new normal of higher rates and move forward with their transactions.

Private capital firms also have the potential to benefit from a less stringent approach to regulation, including possibly fewer restrictions on the ability to attract retail investors to private capital funds. Companies seeking capital could also see benefits, particularly if the Trump administration eases capital requirements, leveraged lending guidelines and other restrictions on traditional banks. With more flexibility to participate in financings that previously may not have been permitted under these restrictions, traditional banks could compete more aggressively with private capital in a broader range of transactions. (See "Trump 2.0 Could Mean a More Bank- and Fintech-Friendly Environment.")

M&A Activity

More M&A activity would increase deal flow in the capital markets, as many acquisitions require some type of debt or equity financing. In addition, an active deal market provides sponsors and investors with more certainty of an exit and liquidity, which has a positive impact on the willingness of sponsors and investors to participate in the broader capital markets.

Notwithstanding the uncertainty around interest rates, the Trump administration's pro-business approach is expected to increase dealmaking in many sectors, including oil and gas, digital currencies, industrials, financial services, artificial intelligence/technology and health care/life sciences. (See "Resilient Economy and Promises of Lessened Regulation, Lower Taxes Raise Hopes for a Surge in M&A.")

Some market participants have already begun revisiting transactions that might not have passed regulatory scrutiny under the Biden administration, in anticipation of a more flexible stance by the Trump administration. (See "Keep Your Seatbelts Fastened: The Wild Antitrust Ride May Not Be Over.")

In Sum

The ultimate impact of the Trump administration's policies on the capital markets will depend on when and how they are implemented. The policies' details, timing, sequencing and scale remain open questions, as do the potential geopolitical responses to them.

The capital markets thrive on certainty, predictability and lack of volatility, and participants are opportunistic. The key will be how well the expectations of the pro-business "Trump trade" match the reality.

Rising Investment in AI Requires Financial Sponsors To Address Unique Risks

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Key Points

- Accelerated M&A activity by financial sponsors is expected in the near term due to improved market conditions and deregulation under the Trump administration.
- With the rapid development of new AI use cases, particularly relating to generative AI, many financial sponsors are searching out AI-related investment opportunities.
- Regulation applying to AI development and use is proliferating at a rapid rate and becoming more complex, particularly across industries and jurisdictions. Investments in AI-focused targets could be devalued if certain laws and regulations are not followed.
- Financial sponsors will therefore need to engage in a sophisticated analysis of any AI-focused target's regulatory compliance, not only to ascertain current compliance but also to ensure any plans for developing the AI — whether developing the tool itself or deploying it to new use cases or markets — will be legally compliant.
- In addition, financial sponsors need clear policies, procedures and guardrails to mitigate risk within their own operations and within portfolio companies.

Donald Trump's return to the White House is expected to result in increased M&A activity by financial sponsors. With anticipated interest rate cuts and waning inflation, sponsors should have access to stronger capital markets and cheaper capital. There is substantial pent-up demand for deals in the form of committed capital ready to be deployed, and past investments — whose exits were often delayed — are now ripe for sales or IPOs. (See "Resilient Economy and Promises of Lessened Regulation, Lower Taxes Raise Hopes for a Surge in M&A" and "Betting on the 'Trump Trade' To Make the Capital Markets Great Again.")

The value of private equity investments in artificial intelligence (AI) more than doubled in 2023 and continued growing in 2024. We expect the upward trend to last for the foreseeable future. (See "US Federal Regulation of AI Is Likely To Be Lighter, but States May Fill the Void.")

President-elect Trump has been vocal about protecting U.S. jobs and industry, including the view that it is critical for the U.S. to lead the race in developing the strongest AI algorithms. His administration's support of AI development may encourage financial sponsors to invest in AI-related companies in the expectation of government incentives.

Although we anticipate continued scrutiny of investments into the U.S. in AI technology, the desire to attract foreign capital to the U.S. should remain, which may lead to less stringent regulations on foreign inbound investment from most countries other than China.

In addition, the Trump administration is expected to return to more traditional merger reviews. Sponsors may therefore perceive the risk of governmental intervention to be lower. However, given the sensitivity of AI technology and bipartisan support for antitrust enforcement in the technology sector, AI transactions will

likely continue to face heightened regulatory scrutiny. This is also the case for AI technology deployed, and/or developed using data from, outside of the U.S.

Additionally, there may be increased scrutiny on add-on transactions by portfolio companies, which could be challenging for financial sponsors looking to grow businesses through inorganic growth. (See "Keep Your Seatbelts Fastened: The Wild Antitrust Ride May Not Be Over.")

Key Considerations for Financial Sponsors Investing in AI

AI technologies present a distinct set of challenges that financial sponsors must navigate both with respect to their internal policies and external portfolio company management, and also in relation to valuing potential targets. These challenges require careful consideration and management.

Global regulatory frameworks. AI technology is constantly evolving and often outpaces the implementation of regulatory frameworks. The use of AI tools must comply with a range of existing legal and regulatory requirements, including international, jurisdictional, federal and state data protection and anti-discrimination laws. Certain data protection laws may also require businesses to offer consumers the ability to opt out of the use of AI for certain consequential decision-making, including hiring, housing and financial decisions, or indeed to request human intervention in relation to a decision made by AI that affects them.

Financial sponsors should consistently monitor legal and regulatory developments as well as evolving industry best practices to ensure compliance not only by the financial sponsor itself but also by its existing and prospective portfolio companies. For example, the EU's Digital Services Act and AI Act address instances where the use of AI may result in hallucinations, or false information. The increasing adoption of AI technologies is also relevant to the application of the EU's Digital Markets Act (DMA). Gatekeepers of core platform services must comply with the obligations set out in the DMA when they integrate AI systems and address how AI systems determine the conduct covered by the DMA provisions.

Effective and strategic governance. While there is an ongoing need to consider global regulatory frameworks, it is also important to protect agile innovation within businesses. Limited legal resources within sponsors, portfolio companies and targets mean that legal teams are not able to quickly review every AI use case. In addition, an in-depth review in more simple use cases could strain those limited resources. Financial sponsors should therefore implement strategic governance frameworks within their own entity and at the portfolio company level, ensuring appropriate legal and compliance oversight of AI. Low-risk AI could be allowed to develop quickly, realizing efficiencies, whereas higher-risk AI (including higher-risk use cases of simple AI) should go through more in-depth internal reviews, given the heightened legal and regulatory scrutiny. This type of approach should also be considered with any potential targets.

Cybersecurity, confidentiality and privacy. AI tools rely on data, which can include confidential business information as well as sensitive or personal data, to perform effectively. The use of personal data to train AI models and the processing of personal data through AI tools must comply with use and disclosure requirements under privacy laws (*e.g.*, the California Consumer Privacy Act and the EU's General Data Protection Regulation). U.S. regulators have made clear that businesses must adequately disclose the use and sharing of personal data to train AI models or risk regulatory investigation and possible compelled deletion of underlying algorithms. EU law, meanwhile, specifies that businesses do not have the automatic right to train AI models on personal data they control. Contractual provisions may also restrict a financial sponsor's use of investor and client confidential information to train AI models. The web of commercial and regulatory considerations may require financial sponsors, or portfolio companies, to update privacy policies, issue notices to clients or investors, revise contracts and possibly seek consent to the use of data or provide certain opt-out rights.

Ethical use of AI. AI tools are only as good as the data they are trained on, and if the data contains biases, the resulting AI tool will as well. Financial sponsors should establish procedures to effectively audit their AI tools, and those of their portfolio companies, for unfair or biased results and ensure steps are taken to mitigate partiality or other potential harms (including breach of law and regulation). This process may include establishing bias assessment protocols and mitigation measures that are consistent with applicable regulatory requirements (*e.g.*, the Colorado Artificial Intelligence Act) and industry standards. Financial sponsors' due diligence of a potential target should ensure that the target conducts regular bias audits and has implemented corrective measures to address any identified biases.

Quality control and integration. While AI investment can boost operational efficiencies for financial sponsors, their portfolio companies and potential targets, it also presents challenges relating to the accuracy of AI outputs and the integration of AI into existing information technology (IT) infrastructure. Financial sponsors, as well as potential target companies, should consider carefully assessing the reliability of data sources and ensure that data input into AI tools is validated and verified, potentially by human review (which is sometimes legally mandated), before it is used in key business operations or to inform external guidance to third parties. Financial sponsors may also ensure they have the proper systems, tools, IT infrastructure and personnel to integrate and maintain their AI tools. When contemplating investment opportunities, sponsors should consider the integration process early on to ensure effective use and maximization of AI technology.

Conclusion

Given the likely increase in M&A activity by financial sponsors in the near term and continued focus on AI, financial sponsors should be ready to capitalize on AI-related opportunities. To do so, financial sponsors need to be cognizant of the unique set of considerations associated with AI investment and develop clear policies, procedures and guardrails surrounding such investments to mitigate risk and fully realize the potential of AI.

Sovereign Wealth Funds and Liberalized Rules Are Driving the Growth of Middle Eastern Business Hubs

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Key Points

- Sovereign-related investors, more commonly referred to as sovereign wealth funds, have increasingly made the Middle East a global center of wealth and investment.
- Gulf SWFs, no longer just passive investors, are taking an active role in big-ticket, controlling-stake M&A transactions outside the region.
- Meanwhile, the region has become more and more open to inbound investment, and to revising rules to attract talent and diversify toward a more sustainable, long-term framework for growth.

Driven to a large extent by the region's enormous sovereign wealth funds (SWFs), the Middle East has become a new global hub of wealth and investment. This is especially the case in the six member states of the Gulf Cooperation Council (GCC) — The United Arab Emirates (UAE), Saudi Arabia, Qatar, Kuwait, Bahrain and Oman — and the region's six largest SWFs by assets under management (AUM), listed below in alphabetical order:

- Abu Dhabi Developmental Holding Company (ADQ).
- Abu Dhabi Investment Authority (ADIA).
- Kuwait Investment Authority (KIA).
- Mubadala Investment Company (Abu Dhabi).
- Public Investment Fund (PIF) (Saudi Arabia).
- Qatar Investment Authority (QIA).

A Major Economic Hub

A glance at recent trends presents a clear picture. By the third quarter of 2024, M&A aggregate deal value in the Middle East increased by 25.3% compared to the same period in 2023, primarily in the UAE and Saudi Arabia. Moreover, in the first half of 2024, over 54% of funds deployed by SWFs globally were from major Middle East SWFs, the highest level since 2009. This is from a pool of $4 trillion, currently managed by just the six SWFs listed above, three of which are based in Abu Dhabi. As of October 2024, at $1.7 trillion, Abu Dhabi was the world's richest city in terms of assets managed by SWFs.

The UAE, and Abu Dhabi in particular, is increasingly becoming a focal point internationally, building on an already established position as a regional hub. Factors for its rise in prominence include:

- A 226% increase in AUM in the last year as more financial firms and asset managers such as hedge funds, private equity firms, institutional funds and venture capital firms open offices in Abu Dhabi (including, most recently, PGIM, General Atlantic, BlackRock and Nuveen).
- With a streamlined approval process in the Abu Dhabi Global Market (ADGM) — the UAE capital's financial hub — 1,271 new licenses were issued in the first half of 2024.
- Regional equity markets have thrived, with the Dubai and Abu Dhabi stock exchanges surging to over $1 trillion in market capitalization by November 2024, surpassing Milan and Madrid. That gain has been driven in large part by the activities of companies linked to the Abu Dhabi conglomerate International Holding Co. as well as big-ticket IPOs such as Lulu Hypermarket's $1.72 billion listing on the Abu Dhabi stock exchange in November 2024 and regional food delivery business Talabat's $2 billion listing in Dubai in December 2024.

Saudi Arabia is also expanding its position as a hub for business, with a number of leading international companies choosing to base their regional headquarters there. Its stock exchange continues to perform well, with deal volumes of IPOs, takeovers and capital raisings jumping by 85% through late 2024 and market capitalization reaching nearly $3 trillion, according to the financial services firm ION Analytics.

Trends in Outbound Investments

The substantial capital that SWFs in the GCC possess is forecast to double to $8 trillion by 2030. SWFs regularly feature in big-ticket, cross-border M&A transactions, and they are often sought after as co-investment partners and limited partner investors.

Recent major transactions abroad include:

- Mubadala Investment Company's investment into Truist Insurance, valuing the insurance group at $15.5 billion.
- Mubadala Capital's purchase of a 42% stake in U.S.-based credit asset manager Silver Rock, which has $10 billion in AUM.
- Mubadala Capital's $8.7 billion take-private of CI Financial, a Canadian asset and wealth manager.
- PIF's acquisition in partnership with France's Ardian of a 37.6% stake in London's Heathrow Airport for £3.26 billion ($4.13 billion).

Mubadala emerged as the largest investor in 2024, investing $29.2 billion across 52 different deals. Alongside Mubadala, four other GCC funds — ADIA, ADQ, PIF and QIA ranked among the top 10 global dealmakers — investing a record $82 billion in 2024. Collectively, this shift away from passive minority investing and the capacity to lead investments and take controlling stakes bodes well for deal activity in 2025, according to ION Analytics' analysis.

Inbound Investments and Foreign Talent

At the same time that the SWFs are taking a more active role in outbound investments, it has become easier to do business in the region. The GCC countries are increasingly open to foreign direct investment (FDI), relaxing restrictive local partnership requirements and streamlining regulatory processes.

For example, Saudi Arabia's new investment law consolidates local and foreign firms under a single investment rule book, leveling the playing field.

Significant recent inbound deals include:

- Microsoft Corporation's $1.5 billion investment in G42, a UAE-based artificial intelligence (AI) firm, in April 2024.
- Brookfield's 2024 deal to invest in Dubai-based private school operator GEMS Education, becoming GEMS' lead investor.

The introduction of "golden visas" allowing for long-term residencies should help attract foreign talent. Revised rules of property ownership and inheritance that are more beneficial for foreigners and low taxes are also likely to make the region appealing to skilled foreigners who can help sustain and expand the region's role in global finance.

Further, with energy transition and diversification a key focus regionally, a more permissive FDI regime led to investments worth approximately $47 billion into the GCC in 2023 alone, with foreign capital investments in Saudi Arabia accounting for 62% of the total value. The Kingdom of Saudi Arabia is also aiming to more than triple FDI, from $29 billion in 2023 to $100 billion a year by 2030.

Such goals have also featured heavily in governments' ambitious national programs for energy transition, with clean energy investment accounting for 15% of total investment in the sector.

Another source of attracting foreign investment is the GCC funds' prioritization of investments in cutting-edge industries such as AI and cryptocurrencies, as in part illustrated by Microsoft's investment in the UAE's G42.

A Focus on Cryptocurrencies

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Cryptocurrencies Stand To Gain From New Regulators and a Receptive Congress

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Key Points

- A Republican president and Congress are expected to be more supportive of digital assets than the current administration.
- There is a reasonable chance that legislation creating a regulatory framework for cryptocurrencies will advance.
- Under Republican SEC chair nominee Paul Atkins, the SEC is expected to be less aggressive in enforcement in the crypto field and favor a more strategic approach.
- Banking regulators may reverse Biden-era policies that deterred banks from providing custodial and other services to crypto participants.
- The digital assets sector could see increased capital markets activity due to a more accommodating regulatory environment.

The incoming Trump administration and Republican-controlled Congress are likely to bring significant — and for industry participants, welcome — changes in the digital assets space.

Political efforts on behalf of cryptocurrencies were well organized and well funded this cycle, with crypto super PACs pouring record amounts into political races. These efforts focused heavily on Republican and key Democratic candidates, with the goal of seating more lawmakers expected to support efforts to bring much-needed regulatory clarity to digital assets.

Those political efforts appear to have paid off. Reports indicate that nearly 300 pro-crypto candidates from both sides of the aisle were elected to the House and Senate, and bitcoin prices have climbed to record highs in the wake of the election — a signal that many anticipate pro-crypto policies and a lighter enforcement touch from the incoming administration.

On the campaign trail, President-elect Donald Trump branded himself the pro-crypto candidate, announcing his intentions to transform the U.S. into the "crypto capital of the world." And in December 2024, he nominated Paul Atkins, a former member of the Securities and Exchange Commission (SEC), to replace current Chair Gary Gensler, who pursued an enforcement agenda at the agency that many saw as anti-crypto.

Many players — both "crypto-native" and traditional financial companies and others — are eagerly waiting to see exactly what these political shifts will mean. Although it remains too early to predict with certainty, we highlight below key areas where we expect to see the most dramatic impacts.

New Key Players

Paul Atkins. President-elect Trump's pick for SEC chair served as a Republican commissioner at the agency from 2002 to 2008, during which time he expressed caution before seeking to regulate new areas. He is generally viewed as pro-crypto, based on a number of factors, including:

- Atkins' recent work in the digital asset space.
- His reputation as a critic of overregulation and regulation by enforcement.
- His ties to Republican commissioners Hester Peirce and Mark Uyeda, both of whom served as counsel to Atkins during his former SEC stint and have been outspoken critics of the SEC's current approach to crypto.

While it remains to be seen how Atkins will engage on crypto-related topics, many in the industry expect an emphasis on clearer industry guidance coupled with a lighter and more focused enforcement touch.

David Sacks. Also in December 2024, President-elect Trump named Sacks, a venture capitalist and former PayPal executive, as the White House artificial intelligence (AI) and crypto czar. While Sacks is generally seen as pro-innovation and a supporter of the crypto sector, some industry participants were hoping for a crypto czar with a stronger track record favoring digital assets.

There was also some disappointment in the sector that this position will include AI rather than be devoted solely to digital assets. It remains to be seen how Sacks will allocate his focus between AI and crypto, and how much power he will wield within the administration — including whether he will drive policy or simply serve in a coordination role.

New Push for Crypto Legislation

It is expected that a new presidency will inject fresh life into efforts to enact laws to address the current legal uncertainty surrounding digital assets.

During the last Congress, the House passed the Financial Innovation and Technology for the 21st Century Act (FIT 21) to establish a regulatory framework for digital assets and allocate jurisdiction between the SEC and the Commodity Futures Trading Commission (CFTC). While FIT 21 does not give the industry everything it wants, it represents the most significant effort by Congress to date.

Overall, FIT 21 divides digital assets between "restricted digital assets" subject to SEC jurisdiction and "digital commodities" subject to CFTC jurisdiction. How assets are allocated depends, in part, on:

- The degree of decentralization of the digital asset's blockchain-based network or application.
- Whether the digital asset was acquired in connection with capital-raising or a secondary-market transaction.
- Whether the asset is held by the issuer or an unaffiliated third party.

In general, the act is seen as limiting the jurisdiction of the SEC, since while the initial offering of a digital asset would be subject to disclosure and other requirements, once its blockchain network or application is deemed decentralized and functional, regulatory treatment — including that relating to trading — would be under the purview of the CFTC.

With Republicans controlling both chambers of Congress, a bill favorable to the sector has a reasonable chance of passing.

Meanwhile, members of the House Financial Services Committee have sought to broker stablecoin legislation that would be acceptable to both parties. With growing bipartisan support for such a bill, there is a good chance Congress will enact such legislation during the next administration.

Finally, there is renewed interest in creating a bitcoin strategic reserve. Wyoming Republican Sen. Cynthia Lummis has sponsored the Bitcoin Act, which would create a strategic bitcoin reserve for the U.S., along with a structured bitcoin purchase program. However, the concept has also drawn criticism in many quarters, including that bitcoin is too volatile for such a reserve, is not interest-bearing and would distort the overall crypto landscape by favoring bitcoin. At this stage, it is too early to assess whether the Lummis proposal will gain any traction.

Decreased SEC Enforcement

President-elect Trump campaigned on the promise of revamping the SEC. Although a less assertive enforcement approach is expected, the parameters will depend on the new chair's leadership. Under the last Trump administration, for example, there was a fierce defense of the SEC's registration provisions, even in cases that involved pure "failure to register" claims and no allegations of fraud. (See "A Significant Shift Away From ESG and Toward Crypto Is Expected at the SEC.")

Increased Banking Activity

We expect federal banking and other financial regulators to revisit Biden-era policies and approaches to digital asset activities. Since 2021, the banking agencies have essentially frozen banks from engaging in custody and other pursuits by issuing interpretations that require them to obtain supervisory nonobjection. This has led to criticisms that an "Operation Choke Point 2.0" exists for the crypto industry, with regulators applying pressure on banks to "de-bank" controversial crypto-related business.

The rescission of these interpretations, as well as the likely reversal of SEC Staff Accounting Bulletin No. 121 — which requires crypto assets to be reported as both an asset and a liability on a custodian's balance sheet — would mark a significant regulatory shift. It also could portend additional industry-friendly changes for the sector, which the president-elect has pledged to protect from regulatory "persecution." (See "Trump 2.0 Could Mean a More Bank- and Fintech-Friendly Environment.")

Increased Capital Markets Activity

The possibility of increased regulatory clarity, coupled with tailwinds of sustained investor interest, broader institutional adoption and increased venture capital funding, is likely to drive a significant rise in related capital markets activity, including IPOs. As the crypto economy continues to mature, we expect the convergence of regulatory developments and market enthusiasm to create robust opportunities for public listings, strategic transactions and deeper institutional engagement. (See "Betting on the 'Trump Trade' To Make the Capital Markets Great Again.")

Increased Private Litigation

Cryptocurrency-related securities litigation has been a trending area for several years now, driven in large part by continued regulatory uncertainty and the SEC's pro-enforcement posture.

If SEC enforcement is de-prioritized, we expect to see an increase in private securities litigation, led by plaintiff firms that have developed expertise in the area and are currently involved in actions around the country in connection with a range of digital assets, projects and products. This increase is particularly likely if it takes time for regulatory clarity to develop and digital asset prices are volatile — two ingredients that historically have fueled private plaintiff activity.

A Significant Shift Away From ESG and Toward Crypto Is Expected at the SEC

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Key Points

- The SEC is set to undergo sweeping changes under the second Trump administration, with a Republican-controlled Commission setting a new agenda.
- The agency is expected to focus on easing regulatory burdens and creating a crypto-friendly regulatory framework, as well as on capital formation and an enforcement program that focuses on investor harms.

The rulemaking and enforcement priorities of the Securities and Exchange Commission (SEC or the Commission) will be substantially different under the incoming administration.

As is customary, Chair Gary Gensler will step down on January 20, 2025. Either Republican Commissioner Hester Peirce or Mark Uyeda is expected to serve as interim chair until the Senate confirms the nominee for SEC chair, Paul Atkins. Once he is confirmed, the three Republican commissioners will constitute a majority of the Commission.

Regulatory Reform

Environmental, social and governance (ESG) rulemaking is not expected to survive 2025 intact. In March 2024, the SEC adopted final rules mandating climate-related disclosures in public companies' annual reports and registration statements. Although the Commission scaled back the final requirements from its original proposal, the rules were subject to multiple legal challenges, and the SEC voluntarily stayed the rules in April 2024.

It is likely that the Trump administration will not defend the lawsuits and may significantly reshape or even reverse the climate-disclosure rules. (See "Some States Prepare for the Expected Rollback of Biden Environmental Regulations.")

In December 2024, in a 9-8 decision, the U.S. Court of Appeals for the Fifth Circuit vacated Nasdaq Stock Market's board diversity rules. The court held that the SEC had exceeded its authority under the Securities Exchange Act in approving such rules. The new Commission is not expected to challenge the decision.

> The Trump administration is expected to be more crypto-friendly than its predecessor, providing clarity and "rules of the road" for digital assets.

(See also "Employers' DEI Initiatives Are Likely To Be Targeted in the Second Trump Administration.")

In October 2024, the SEC delayed the timeline for other ESG-related disclosure proposals on its agenda, including human capital management and corporate board diversity. The new Commission will likely remove these rulemakings from the agenda, and we anticipate that there will be a fundamental shift away from new ESG rulemakings.

Creating a regulatory framework for cryptoassets is likely to become a high priority. The Trump administration is expected to be more crypto-friendly than its predecessor, providing clarity and "rules of the road" for digital assets. Under Chair Gensler, the SEC pursued several enforcement actions against crypto companies for alleged violations of securities laws.

While there appears to be consensus on the few digital assets that are not securities, there is room for Congress or the Trump administration to promulgate laws or regulations governing digital assets more generally. A new framework could include defining when digital assets are offered and sold as securities and proposing related rules. During this period, there could be a pause in enforcement actions.

There is also the possibility that the government may deem cryptoassets a commodity rather than a security, bringing crypto under the governance of the Commodity Futures Trading Commission (CFTC). (See "Cryptocurrencies Stand To Gain From New Regulators and a Receptive Congress.")

We also expect that the new leadership at the SEC will rethink and likely repeal the staff guidance included in Staff Accounting Bulletin No. 121 covering the accounting for obligations to safeguard cryptoassets that an entity holds for platform users. Republicans widely criticized this guidance, which effectively barred banks and broker-dealers from most crypto-related activities, when it was issued in April 2022. (See "Trump 2.0 Could Mean a More Bank- and Fintech-Friendly Environment.")

Additional potential agenda items include easing burdens relating to capital formation, particularly for smaller companies or offerings. Further, under the first Trump administration, the SEC imposed higher minimum stock ownership requirements for shareholder proposals. The second Trump administration may wish to revisit shareholder proposals, possibly making it more challenging for shareholders to include resolutions in a company's proxy statement.

Enforcement Priorities

During the first Trump administration, a key focus of the SEC's enforcement efforts was on protecting retail investors. While the SEC under Chair Gensler tested novel legal theories in enforcement actions, we expect the incoming administration to take less aggressive positions and fewer legal risks. We also anticipate that enforcement cases will focus on clear investor harms and principles-based views on materiality. (See "Approach to Corporate Enforcement May Become More Business-Friendly.")

Revisiting Regulations and Policies

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US Federal Regulation of AI Is Likely To Be Lighter, but States May Fill the Void

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Key Points

- President-elect Trump appointed David Sacks, a venture capitalist, as the White House AI and crypto czar.
- The Trump administration is likely to adopt a light regulatory approach to AI development and deployment, and may repeal some or all of President Biden's executive order on AI, as was promised in the Republican Party platform.
- We are unlikely to see omnibus federal AI legislation, creating a void that states are likely to continue to step into with their own state-specific regulations.
- Despite being critical of the CHIPS and Science Act during the campaign, the Trump administration is not expected to seek to repeal or materially change that law.

The development and deployment of artificial intelligence (AI) systems stand to be the most significant technological advancement in the coming years. Yet while AI adoption is top of mind for most company executives and boards, AI regulation received scant attention during the presidential campaign.

Overall, we expect a light regulatory touch by the Trump administration with respect to AI. However, as discussed below, individual states may continue to step into the void and enact their own AI legislation.

Appointment of AI Czar

President-elect Donald Trump appointed David Sacks, a venture capitalist and an early executive at PayPal, as the White House AI and crypto czar. Many expect that given Sacks' venture capitalist background, he will bring a pro-innovation, pro-startup approach to the AI sector, including with respect to regulation. This may mesh well with President-elect Trump's agenda, given that in his announcement appointing Sacks, the president-elect said that Sacks will move the government away from "big tech bias and censorship."

In that announcement, the president-elect also said that Sacks would "work hard on a legal framework so the Crypto industry has the clarity it has been asking for," but he made no corresponding statement regarding AI regulation. It is too early to tell whether this was more of nod to the crypto industry or a careful statement that there would not be a push for a legal framework for AI. (See "Cryptocurrencies Stand To Gain From New Regulators and a Receptive Congress.")

The Future of the Biden Executive Order

In October 2023, President Joe Biden issued a broad executive order on AI (AI Order), which the administration touted as a vehicle to establish AI safety and security standards while protecting privacy, advancing civil rights and promoting innovation. However, most of the AI Order was a series of directives to various federal agencies to study and prepare reports on the impact of AI, and in certain cases to issue guidance on safe AI adoption.

> It remains to be seen which parts of the AI Order President-elect Trump will repeal, especially since some aspects enjoyed bipartisan support.

The AI Order also invoked the Defense Production Act (DPA) to require companies developing any AI foundation model

that poses a serious risk to national security, national economic security, or national public health and safety to notify the federal government when training such a model, and to share the results of all red-team safety tests (*i.e.*, tests within a controlled environment to discover flaws and vulnerabilities in an AI system).

The Republican Party platform vowed to "repeal Joe Biden's dangerous Executive Order that hinders AI Innovation, and imposes Radical Leftwing ideas on the development of this technology. In its place, Republicans support AI Development rooted in Free Speech and Human Flourishing."

It remains to be seen which parts of the AI Order President-elect Trump will repeal, especially since some aspects — such as the guidelines dealing with national security — enjoyed bipartisan support. However, Republicans criticized the requirements imposed on AI developers through invocation of the DPA as too proscriptive and anti-innovation, and these requirements may therefore be a target for repeal.

A November 2020 memo issued by the Office of Management and Budget (OMB) at the end of President-elect Trump's first term also indicates that the incoming Trump administration will likely opt for a lighter regulatory approach. The memo, "Guidance for Regulation of Artificial Intelligence Applications," adopted an innovation-friendly approach to AI: "Federal agencies must avoid regulatory or non-regulatory actions that needlessly hamper AI innovation and growth."

We also expect the Trump administration to focus less on bias and discrimination issues as they relate to AI. As just one example, the OMB Guidance to the AI Order proposed that agencies establish safeguards when assessing AI that take into account, among other matters, the impact of AI on factors contributing to algorithmic discrimination and disparate impacts, and ensure that AI advances equity, dignity and fairness. The Trump administration may conclude that those requirements need not be included in any agency AI safeguards.

More generally, certain AI-related enforcement priorities are likely to be scaled back at the federal level, including scrutiny by the Federal Trade Commission (FTC), which, during the Biden administration, targeted the deceptive and unfair use of AI in several enforcement actions and sweeps, and used the remedy of "algorithmic disgorgement" (the enforced deletion of algorithms developed using illegally collected data) in a number of actions. (See our January 2, 2024, client alert "Proposed FTC Order Suggests Blueprint for AI Adoption.")

AI Legislation

It is difficult to imagine that omnibus federal AI legislation will be enacted in the near term given the lack of consensus, even within each party, as to what such legislation should look like.

However, two sets of narrower AI bills currently pending in Congress enjoy bipartisan support and may be an early bellwether for how the next four years will play out:

- The AI Advancement and Reliability Act (H.R. 9497) and the Future of Artificial Intelligence Innovation Act (S. 4178), which would authorize the establishment of the AI Safety Institute, a group within the National Institute of Standards and Technology (NIST) focused on evaluating, testing and developing guidelines for AI models.
- The CREATE AI Act (H.R. 5077; S. 2714), which would make permanent the National Science Foundation's National AI Research Resource pilot program. The program is currently scheduled to run through January 2026 and provides tools for AI research.

While these bills have all advanced out of committee, it remains to be seen if the Trump administration will support any of them or seek any modifications.

The Role of the States

In the absence of omnibus federal legislation or regulation of AI, we expect to see states take an even more active role in enacting state-specific AI regulations. These will likely range from laws such as Colorado's comprehensive AI law to targeted legislation, such as the Tennessee law protecting against deepfakes.

We also may see states adopt a more aggressive approach to regulating the use of automated decision-making technology. This might include laws regarding:

- The testing that AI developers need to conduct before releasing certain models.
- Disclosures developers may be required to make regarding the safety of their models.
- Obligations on those deploying AI models to let users know that they are interacting with an AI model.
- Limits on how AI can be used.

The Role of Elon Musk

One wild card in trying to assess AI policy under a second Trump administration is the role that Elon Musk will play with respect to such policies. Musk, who to date has emerged as a trusted adviser to President-elect Trump and has been appointed to help lead the planned advisory Department of Government Efficiency, has long expressed concerns about the unchecked power of AI and supported a California law that would have imposed various obligations on developers of advanced AI. That bill was vetoed by Gov. Gavin Newsom.

However, Musk has also formed his own AI company, xAI, which he has said will not have an-y guardrails against disinformation and hate speech. He has also criticized other AI companies as having a liberal bias. The AI policy views that Musk articulates to Trump therefore may help to shape the Trump administration's posture on AI.

(See also "Rising Investment in AI Requires Financial Sponsors To Address Unique Risks.")

Trump 2.0 Could Mean a More Bank- and Fintech-Friendly Environment

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Key Points

- New leadership at the financial regulatory agencies is likely to reverse some Biden-era rules and policy statements.
- President-elect Trump's picks are expected to make industry-friendly changes in a number of areas, including supervision, capital and liquidity requirements, and digital assets.
- Banks and fintechs are entering the most favorable regulatory environment in years. Time is of the essence for institutions to understand the implications of key changes and ensure that they are positioned to act opportunistically, particularly for M&A and bank chartering.

Banking and financial issues did not have a central role in the 2024 election, but they are set to come into focus in the first quarter of 2025 as new leadership takes over in the White House, both chambers of Congress and the federal financial regulatory agencies.

The changes will prompt new supervisory and enforcement priorities and could usher in a regulatory environment more open to bank mergers and innovation in financial technology and digital assets.

Personnel as Policy

Republican control of the Senate will likely bring swift approval to many, if not most, of President-elect Donald Trump's nominees that require Senate consent. Even prior to formal confirmation, Trump will be able to rely on "acting" heads to immediately control certain federal agencies.

Because of the relative paucity of federal banking legislation in recent years, the selection of key personnel itself will mean a change in policy. New leadership can issue new interpretations and rescind Biden-era rules and policy statements.

In a number of areas, which we highlight below, these "Trump 2.0" regulators are expected to usher in a new deregulatory environment. Financial institutions should carefully assess and communicate the implications of key regulatory changes to their boards, investors and other relevant stakeholders.

Policy and Priority Shifts Signal a New Deregulatory Environment

As financial institutions adjust to an altered legislative and regulatory landscape in Washington, several areas are particularly important to keep an eye on in 2025:

- **Reversal of Biden-era rules and policies.** It is widely anticipated that President-elect Trump will revoke a number of Biden-era executive orders, and that his appointees will rescind policies or guidance on various topics, including on climate and environmental, social, and governance (ESG) matters. (See "A Significant Shift Away From ESG and Toward Crypto Is Expected at the SEC.") In addition, certain prior rules (such as those under the Community Reinvestment Act and the Consumer Financial Protection Bureau's (CFPB) recently finalized rules on "open banking" and supervising large nonbank payment providers) and proposed rules (such as the Federal Deposit Insurance Corporation's (FDIC) changes regarding brokered deposits) could be revisited, although it is not clear how the new agency heads will approach rules that adversely impact the largest banks and fintech companies.
- **Examination and enforcement.** The banking agencies, market regulators and CFPB will likely have a different approach to examination and enforcement than under the Biden

administration: more sensitivity to "regulation by enforcement" complaints and a greater focus on transparency, both in the examination process and in the specific remediation steps needed to close out enforcement actions. There also could be pressure for supervisory and enforcement actions to be linked to specific violations of statute or regulation. And more emphasis may be placed on risk-based supervision that prioritizes key safety and soundness issues over areas that have been criticized as "check the box" compliance and management issues. Nevertheless, we expect regulators to continue ordinary-course examination and enforcement in areas of bipartisan interest, such as anti-money laundering and sanctions, cybersecurity and data protection. In addition, we do not foresee the current regulatory scrutiny of bank-fintech partnerships abating. (See "Political Changes Are Unlikely To Fundamentally Alter Key Sanctions.")

- **Digital assets.** As a candidate, President-elect Trump vowed to make the U.S. the "crypto capital" and to end the "persecution" of the crypto industry. He has promised to appoint an advisory council on crypto issues and to advance rules "written by people who love" the industry. Nominees for the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission will provide the earliest indication of the White House's priorities for digital assets and crypto policy. (See "Approach to Corporate Enforcement May Become More Business-Friendly.") In addition, whether and how the two agencies cooperate on novel issues of policy and market structure will be critical. The industry also will look to whether the SEC reverses Staff Accounting Bulletin No. 121, which effectively bars banks from engaging in a wide range of cryptoasset-related banking activities, such as custody services. (See "Cryptocurrencies Stand To Gain From New Regulators and a Receptive Congress.")

- **Capital and liquidity requirements.** Efforts under the Biden administration to advance heightened capital requirements under the so-called "Basel III endgame" proposal stalled in 2024. Under the Trump administration, it is likely that the proposal will be scrapped or revised substantially to be capital-neutral. In addition, the prospects for the surcharge proposal for global systemically important banks and potential rules on long-term debt and liquidity requirements are uncertain.

- **Artificial intelligence.** AI is certain to be of interest to financial regulators over the next four years, particularly as new applications emerge. President-elect Trump has said he will revoke President Joe Biden's 2023 executive order, which outlines AI policy broadly and promotes the development of safeguards against algorithmic discrimination and personal data abuses, as well as of reporting of foreign involvement with certain domestic AI activities. (See "US Federal Regulation of AI Is Likely To Be Lighter, but States May Fill the Void.")

- **Federal housing policy.** Since 2008, the nation's government-sponsored housing finance enterprises, Fannie Mae and Freddie Mac, have been in federal conservatorship. President-elect Trump's Federal Housing Finance Agency selection and statements on privatization will be closely watched.

New Prospects for Bank M&A and Financial Innovation

In recent years, uncertainty on bank regulatory approvals, as well as concerns about unrealized losses on banks' balance sheets, dampened merger activity. In addition, antitrust scrutiny stymied the broader appetite for bank M&A and certain fintech investments. Following the 2024 election, we expect M&A activity will be back on the table for many banks. (See "Resilient Economy and Promises of Lessened Regulation, Lower Taxes Raise Hopes for a Surge in M&A.")

Fintechs are also likely to find a more supportive regulatory environment if they pursue banking charters, including nonconventional ones such as for industrial loan companies.

In the coming months, it will be important to monitor whether and how regulators streamline the process for reviewing bank mergers and new charter applications. Policy statements issued by the Office of the Comptroller of the Currency and FDIC in September 2024 may also be adjusted to reflect greater receptivity to approving deals. In addition, the Department of Justice, which recently withdrew from the 1995 Bank Merger Guidelines, could provide new clarity about how it will review deals for anticompetitive effects. (See "Keep Your Seatbelts Fastened: The Wild Antitrust Ride May Not Be Over.")

Monitoring developments is not the only task. Banks and fintechs pursuing growth strategies should assess their internal readiness to do deals, both from a capital adequacy and risk management perspective, and engage with key stakeholders and advisers.

Some States Prepare for the Expected Rollback of Biden Environmental Regulations

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Key Points

- President-elect Trump has said he would reverse his predecessor's climate policies, withdrawing from the Paris Agreement on greenhouse gas emissions and rescinding some EPA emissions rules.
- The SEC's proposed rules mandating detailed disclosures about climate policies and impacts will likely be withdrawn.
- While, as a congressman, the nominee for EPA administrator supported legislation on so-called forever chemicals, the EPA's recent regulatory efforts in this area will likely be rolled back.
- Many states are increasing their own regulatory efforts and enforcement initiatives to fill what they expect to be a void in federal environmental action.

President-elect Donald Trump campaigned on a promise to aggressively roll back federal regulations across a number of areas, and we expect that many of the Biden administration's actions to address climate change will be targeted as part of this deregulation effort. (See "A Significant Shift Away From ESG and Toward Crypto Is Expected at the SEC.")

Specifically, the incoming president has indicated his administration will:

- Withdraw once again from the 2015 Paris Agreement, which aims to limit global temperature increases to 1.5 degrees Celsius.
- Rescind the Environmental Protection Agency's (EPA) rules requiring significant reductions in greenhouse gas emissions from existing coal-fired power plants and new natural gas-fired power plants.
- Withdraw the EPA's proposed rule imposing a fee on methane emissions from oil and gas facilities.
- Resume the approval of new facilities that export liquefied natural gas, which the Biden administration paused pending an assessment of the climate impacts of new gas exports.
- Rescind the climate-related disclosure rules issued by the Securities and Exchange Commission (SEC). President-elect Trump's pick to head the Department of Energy is the CEO of one of the plaintiffs in the litigation currently challenging these rules.
- Ease federal rules setting ambitious fuel efficiency standards, which were expected to push manufacturers toward electric vehicles.

The fate of other environmental regulations remains uncertain. Under President Joe Biden, the EPA has taken a number of regulatory actions with respect to per- and polyfluoroalkyl substances (PFAS), also known as forever chemicals. They have included:

- Listing certain types of PFAS as hazardous substances under federal environmental laws.
- Setting national drinking water standards for certain PFAS.
- Establishing water quality criteria for PFAS.
- Expanding reporting requirements for PFAS.
- Identifying PFAS as a National Enforcement and Compliance Initiative for 2024-27.

While some commentators have predicted that these regulations will also be rolled back, President-elect Trump's pick for administrator of the EPA, Lee Zeldin,

twice voted in favor of legislation to designate PFAS as hazardous substances and set drinking water standards for these chemicals when he represented Long Island, New York, as a congressman from 2015 to 2023. Zeldin also opposed cuts to EPA funding under both Democratic and Republican presidents.

Thus, it may be that the Trump administration will aim to increase the permissible levels of PFAS in the environment rather than move to eliminate these regulations altogether.

At the same time, Democratic-led states have pledged to continue their own efforts to lower greenhouse gas emissions and address other environmental issues. For example, New York Gov. Kathy Hochul recently signed into law the Climate Change Superfund Act, which requires certain companies to pay a fee for their greenhouse gas emissions.

Meanwhile, the Mayor's Office of Climate and Environmental Justice for New York City has said it will continue efforts to meet its target of reducing greenhouse gas emissions by 80% by 2050, regardless of any change in federal climate policy.

And California Attorney General Rob Bonta has promised to fight any efforts by the incoming administration to roll back environmental regulations affecting California. He noted that his state sued the first Trump administration over 120 times (with the majority of those cases involving environmental issues) and is prepared to do so again during the second Trump administration if necessary.

Employers' DEI Initiatives Are Likely To Be Targeted in the Second Trump Administration

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Key Points

- Employers can expect their DEI programs to face resistance from both the federal government and private parties during President-elect Trump's second term, emboldened in part by recent Supreme Court decisions.
- The president-elect could reinstate his 2020 executive order that prohibited diversity training in federal agencies, and the Heritage Foundation's Project 2025 suggests eliminating several federal programs and practices supporting DEI policies.
- Republicans will almost certainly gain majority control of the EEOC, potentially increasing pressure on the private sector to refrain from DEI initiatives.
- Broadening definitions of diversity and developing race-neutral approaches to hiring may help employers seeking to promote diverse work forces withstand legal challenge.

Employers should prepare for continued challenges to their diversity, equity and inclusion (DEI) programs during President-elect Donald Trump's second presidency.

In the wake of George Floyd's murder and the widescale protests that followed, many U.S. employers vowed to take action to increase racial diversity within their organizations. Some introduced or supplemented DEI programs and initiatives, including broader recruiting outreach, conferences, internships, training, mentorship programs, compensation incentives and aspirational goals, with the view that a more diverse workforce helps better serve the communities in which the companies operate.

Opponents of DEI condemned these efforts as divisive, racist and oppressive.

In one of the first Trump administration's early efforts to curtail DEI initiatives, President Trump signed an executive order in September 2020 prohibiting the federal government and government contractors from conducting diversity training, which the executive order characterized as "offensive and anti-American race and sex stereotyping and scapegoating." The Trump administration also established a hotline to report those who conducted such training in violation of the executive order. Though President Joe Biden rescinded the order after taking office, more anti-DEI action along these lines is expected when President-elect Trump returns for a second term.

The Heritage Foundation's Project 2025 may provide insight into some areas of focus for President-elect Trump's upcoming term, especially because several of his proposed cabinet appointees had a hand in its development.

As stated on its website, Project 2025 "advocates for the end of divisive, race-based, anti-American propaganda like DEI in the federal workforce." Among other actions, it suggests eliminating:

- Disparate impact, which imposes liability on entities, including employers, with policies or practices that have a discriminatory impact on members of protected groups.
- Race and ethnicity data collection by the Equal Employment Opportunity Commission (EEOC).

- The Office of Federal Contract Compliance Programs, which currently exists to ensure federal contractors abide by laws and regulations requiring nondiscrimination and affirmative action.

The incoming administration will also be in a position to make changes at the EEOC. Currently, the EEOC is comprised of four commissioners — three of whom were nominated by President Biden — as well as one vacancy and a general counsel. The terms of all Democratic commissioners and the general counsel will end during the Trump presidency, giving the administration the opportunity to nominate a majority of EEOC commissioners by the end of 2026.

Following the U.S. Supreme Court's June 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina* (*SFFA*), EEOC Commissioner Andrea Lucas, a Trump appointee, criticized "race-conscious corporate initiatives" and encouraged employers to "take a hard look at their diversity programs."

If the EEOC shifts to a Republican majority, it is likely to take a similarly critical stance against DEI in the corporate setting.

The Supreme Court's decisions in *SFFA* and *Muldrow v. City of St. Louis* (described below) further evidence the challenges that DEI programs may continue to face in the courts. *SFFA* did not directly impact employment law, but the decision emboldened plaintiffs, including nonprofit groups and individuals, to challenge corporate DEI programs.

Conservative activists have filed EEOC charges against airlines, retailers, sports leagues, law firms, accounting firms and many others with strong public commitments to DEI, alleging that their respective DEI practices are illegal and discriminatory. (See our June 2024, March 2024 and December 2023 articles on this topic.)

> Challenges to DEI efforts may receive additional support from the courts as well.

Others have tried a different tactic: public pressure. An individual with more than 738,000 followers on X has used his platform to encourage consumers to boycott employers with strong DEI programs. Under this type of pressure, many Fortune 100 companies and law firms have discontinued or significantly modified their DEI programs.

Challenges to DEI efforts may receive additional support from the courts as well. The Supreme Court's decision in *Muldrow* lowered the standard for the degree of harm an employee must experience to claim discrimination under Title VII of the Civil Rights Act, making it easier for such claims to survive early stages of litigation.

Recently, in a 9-8 decision, the U.S. Court of Appeals for the Fifth Circuit vacated Nasdaq Stock Market's board diversity rules, which had required Nasdaq-listed companies to (i) publicly disclose the total number of company board members and how those board members self-identify regarding gender, predefined race and ethnicity categories, and LGBTQ+ status; and (ii) have at least two diverse board members (or explain why it does not). Though not rooted in anti-discrimination law, the decision is another setback for DEI efforts. (See also "A Significant Shift Away From ESG and Toward Crypto Is Expected at the SEC.")

And in February 2025, the Court will hear arguments in *Ames v. Ohio Department of Youth Services*, to determine whether members of a majority group are required to meet a heightened pleading standard to prove "reverse" discrimination claims.

In that case, a heterosexual female plaintiff alleged that her employer declined to promote her and subsequently demoted her, in each case, because of her sexual orientation. The district court granted summary judgment in favor of the employer, reasoning that the plaintiff did not offer sufficient evidence of "background circumstances to support the suspicion that the defendant is that unusual employer who discriminates against the majority."

The U.S. Court of Appeals for the Sixth Circuit affirmed, applying the same standard as the district court. The outcome of this case at the Supreme Court will implicate the standard that majority plaintiffs must satisfy in alleging reverse discrimination and may make it easier for plaintiffs to bring reverse discrimination claims, including claims that challenge DEI initiatives.

Even in the face of the ever-increasing scrutiny of DEI, many employers have doubled down on their commitments. Employers have removed race- and sex-based employment criteria and broadened their definitions of diversity to include race-neutral components, as we discussed in June 2024. And many public companies, even if not required, may continue to provide some level of board diversity data on a voluntary basis.

Employers may also introduce interview questions or essays to evaluate qualities the employers seek in employees, such as ability to overcome adversity, leadership potential, work ethic and teamwork. These kinds of efforts are likely to withstand scrutiny, as long as the revised criteria are not used as proxies for race, sex or other protected characteristics.

Approach to Corporate Enforcement May Become More Business-Friendly

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Key Points

- The incoming Trump administration is expected to take a more lenient approach to prosecuting entities, reducing emphasis on bringing actions based on what may be viewed as novel theories.
- Prescriptive policies on self-reporting and cooperation by companies, recently adopted by the DOJ and CFTC, may be loosened.
- Legislation could clarify jurisdiction over cryptocurrency, possibly assigning that to the CFTC rather than the SEC. Both agencies are expected to adopt more crypto-friendly approaches, absent indicia of fraud.

Anticipating enforcement priorities under a new administration is challenging before the appointment of permanent leadership that will set priorities for policing corporate crime and market misconduct. Lessons from the first Trump term, however, suggest that the incoming administration will bring a more business-friendly environment.

DOJ Enforcement

The Department of Justice (DOJ) is expected to take a less aggressive stance toward companies, as the incoming administration has signaled a desire to reduce regulation and spur business and economic growth. Thus, the DOJ is less likely to pursue novel legal theories than it has been under the Biden administration.

> An effective compliance program will generally remain a critical factor in determining whether to charge a company or settle.

The DOJ may also be more willing to accept nonprosecution or deferred prosecution agreements, rather than seek guilty pleas or convictions for corporations or their parent companies — a priority under the Biden administration. However, an effective compliance program will generally remain a critical factor in determining whether to charge a company or settle, so businesses should ensure that these programs are up to date and enforced.

The DOJ under the Biden administration implemented prescriptive policies on self-reporting and cooperation in order for companies to receive credit in resolving charges. The department in the next administration may consider modifying these policies to reduce companies' obligations or enhance clarity about how to comply and obtain cooperation credit.

Finally, the DOJ may be less likely to believe that criminal enforcement is the proper means to prevent and deter corporate wrongdoing, and may defer more to civil regulators when it comes to addressing violations, as was articulated in a policy in effect in the first Trump administration.

SEC Enforcement

With the planned departure of two Democratic commissioners, including the chair, President-elect Donald Trump will have the opportunity to appoint two new commissioners on the Securities and Exchange Commission (SEC or the Commission). The Republican-majority commissioners will then select a new director of enforcement.

We expect that these leadership changes will lead to a reset in the SEC's priorities. The SEC staff may focus primarily on its core areas, such as:

- Financial accounting and issuer disclosures that materially impact financial performance and reporting (*e.g.*, non-GAAP disclosures).
- Insider trading.
- The Foreign Corrupt Practices Act.
- The protection of retail investors (*e.g.*, Regulation Best Interest).

There could be a pullback in the pursuit of novel theories such as:

- "Shadow" insider trading.
- Technical internal controls-related cases with no accompanying substantive violations or that test the boundaries of enforcement's statutory authority.
- Record-keeping violations arising from off-channel communications.

Regulations and related enforcement actions pertaining to environmental, social and governance (ESG) matters, where there is no clear connection to materiality to investors, could also see a reversal. (See "A Significant Shift Away From ESG and Toward Crypto Is Expected at the SEC.") As to cybersecurity, companies will likely be seen more as victims of cyberattacks rather than as culpable for failures related to cybersecurity controls that may have led to breaches.

The SEC, under the leadership of Republican commissioners, may also put a hold on issuing decisions on whether to settle or litigate certain types of cases, such as nonfraud cases against public companies. The decision-making pause may be either temporary, to assess the merits of the cases in accordance with new priorities, or permanent.

In addition, the Commission may be reluctant to authorize corporate penalties where there is no evidence of a corporate benefit from the violations. Ongoing actions against cryptocurrency entities, especially intermediaries, may be dismissed or become vehicles (*e.g.*, through settled orders) that will provide clearer guidance and workable regulatory frameworks.

With respect to cryptocurrency, the incoming administration has signaled that it will adopt a more crypto-friendly approach, which may mean fewer investigations and enforcement actions. Retail investor protection likely will continue to be a priority, but we may see more initial coin offerings, fewer regulatory roadblocks (especially from the Division of Corporation Finance during its review of filings concerning crypto-related companies or projects) and the growth of crypto exchange-traded funds (ETFs). (See "Cryptocurrencies Stand To Gain From New Regulators and a Receptive Congress.")

CFTC Enforcement

During the Biden administration, the Commodity Futures Trading Commission (CFTC) brought a number of cases for compliance failures under strict liability theories, such as the use of off-channel communications and errors in reporting swap data. Republican commissioners often criticized these actions as based on technical and unintentional violations of complicated rules or "regulation by enforcement" because the CFTC had not provided clear guidance through rulemaking.

With the Trump administration expected to nominate a new CFTC chair imminently, the new Republican-majority body will select the director of enforcement. This move is expected to significantly shift the CFTC's enforcement priorities away from technical compliance issues and toward market manipulation and fraud.

The CFTC may also be more flexible in granting self-reporting credit to companies. To date, its staff's practice has been to require companies to self-report issues on a timeline that Republican commissioners have criticized as unrealistic, and to not give self-reporting credit for issues that are required to be disclosed in annual reports to the CFTC. The CFTC might look to reverse that practice and grant self-reporting credit in more situations.

The Trump administration may push forward legislation that solidifies the CFTC's jurisdiction over spot digital assets. In 2023, the House of Representatives passed a crypto bill with bipartisan support that would grant the CFTC jurisdiction over many digital assets, but it was never taken up by the Democratic-majority Senate nor endorsed by the Biden administration.

Over the past few years, the CFTC has brought a number of cryptocurrency cases, at times based on novel legal theories and over the dissent of the Republican commissioners. The new CFTC will likely be more concerned about whether the agency is reaching beyond its jurisdictional limit or stifling the development of cryptocurrency and other digital assets through such cases.

Possible Tax Reforms Could Run Up Against Deficit and Debt Concerns

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Key Points

- Many of the tax reform suggestions President-elect Trump floated during the campaign would result in significant revenue loss, which could mean they will face resistance from Republicans concerned about budget deficits and the national debt.
- Key issues are likely to include extending international tax provisions adopted in 2017 as well as tax benefits for domestic businesses and addressing the global minimum tax initiative.
- Renewable energy credits could be reduced to offset the fiscal impact of other changes.
- Many of the proposals are unlikely to win Democratic support, and Republicans do not have enough Senate seats to defeat a filibuster, so the incoming administration may have to rely on the budget reconciliation process to win approval for tax changes.

Tax policy has emerged as a key focus following the presidential election. While President-elect Donald Trump did not unveil a detailed tax plan during his 2024 campaign, he has proposed several reforms that have gained traction within the Republican-controlled Congress.

The viability of these tax reforms will depend on two critical factors.

The first is the budget reconciliation process in the Senate. While Republicans currently hold 53 Senate seats, their majority falls short of the 60 votes needed to overcome a filibuster. Unless a bipartisan agreement is reached — an unlikely scenario — Republicans will probably resort to the budget reconciliation process to advance a partisan tax bill with a simple majority.

The second factor is budgetary concerns related to the sustainability of tax cuts, the growth of the national deficit and the imperative of aligning tax policies with fiscal responsibility. Although this article focuses on select potential reforms, if the Republicans manage to fully implement all of their proposals through reconciliation, the planned tax cuts could result in a revenue loss of approximately $6.7 trillion from 2025 to 2034, excluding any offsets.

The proposed offsets include:

- Repealing the Inflation Reduction Act's (IRA) green energy tax credits, estimated to save $921 billion.
- Imposing significant tariffs, such as a 25% tariff on all imports from Canada and Mexico, along with an additional 10% tariff on all imports from China, estimated to generate around $1.2 trillion in revenue collectively from 2025 through 2034. (See "Decoding Tariff Threats: What Importers Can Expect on Day 1 and Beyond.")

For tariff revenues to be eligible for reconciliation, however, they would need to be established through legislation, which appears improbable since congressional Republicans would likely not back a substantial tariff hike. Thus, with the U.S. national debt exceeding $36 trillion in 2024, any reform with a large price tag is likely to raise concerns among fiscal conservatives.

Given these two factors, we outline some of the key tax reforms we expect to see during President-elect Trump's second term.

TCJA — International Tax Provisions

Certain international tax provisions introduced by the Tax Cuts and Jobs Act of 2017 (TCJA) are scheduled to expire on December 31, 2025. If Congress does not intervene, these expirations will result in higher effective tax rates for U.S. multinational enterprises. Specifically:

- The global intangible low-taxed income (GILTI) rate will rise from 10.5% to 13.125%.
- The foreign-derived intangible income (FDII) rate will increase from 13.125% to 16.4%.
- The base erosion and antiabuse tax (BEAT) rate will grow from 10% to 12.5%.

Republicans have expressed their intention to either extend these provisions or introduce additional reforms to further stimulate domestic manufacturing. Depending on the legislative changes and duration of the extension, budgetary constraints could present substantial challenges.

For example, continuing the existing GILTI, FDII and BEAT rules through 2034 is projected to cost $141 billion. Such an expense complicates the fiscal landscape, potentially hindering efforts to reach a consensus on extending or revising these tax provisions.

> Pillar Two faces significant uncertainty in the U.S., particularly given the Republicans' emphasis on national sovereignty and deregulation.

Another key consideration is the interaction between the TCJA provisions and the global minimum tax initiative (Pillar Two), as well as the Organization for Economic Cooperation and Development's (OECD) broader international tax reform efforts. Pillar Two faces significant uncertainty in the U.S., particularly given the Republicans' emphasis on national sovereignty and deregulation.

Currently, a safe harbor provision offers U.S. companies some protection from the more severe impacts of Pillar Two. However, this provision expires at the end of 2025 (or the end of the 2026 fiscal year for noncalendar year taxpayers), necessitating congressional action to address potential conflicts between the U.S. tax rules and Pillar Two.

If the U.S. government does not adopt Pillar Two — a likely scenario — U.S. earnings could be subject to higher taxes in a foreign jurisdiction that has adopted this measure, undermining the U.S. tax base. This may also prompt other jurisdictions to adopt unilateral measures, leading to a disjointed and a less predictable global tax environment and heightened compliance burdens.

TCJA — Other Provisions

Outside the realm of international tax, other tax reforms may include changes to tax incentives for certain closely held businesses. Internal Revenue Code Section 199A, which allows a deduction of up to 20% of qualified business income for sole proprietorships, S corporations and partnerships, was introduced as part of the TCJA and is set to expire at the end of 2025.

Section 199A was designed to complement the significant reduction in the corporate income tax rate under the TCJA, and policymakers have identified it as a key priority, because letting it expire would result in a substantial increase in the federal tax burden for domestic businesses in certain industries.

However, extending Section 199A permanently is estimated to reduce federal tax revenues by approximately $684 billion between 2025 and 2034. Moreover, other expiring provisions will likely influence the future of the provision, such as those relating to individual tax rates and bonus depreciation.

In addition, President-elect Trump has proposed:

- Eliminating the research and development amortization rules under the TCJA in favor of immediate expensing.
- Reversing the phase-out and reinstating the 100% bonus depreciation benefit.
- Switching the interest deduction limitation back to using EBITDA (earnings before interest, taxes, depreciation and amortization) rather than EBIT (earning before interest and taxes).

Other Potential Reforms

Renewable energy credits will also be central to the upcoming tax reform. The IRA expanded existing renewable energy tax credits, introduced new credits, increased credit amounts and instituted new monetization methods, greatly broadening the pool of potential participants.

During his campaign, President-elect Trump criticized these renewable energy credits as costly and pledged to eliminate them, preferring instead to support the traditional energy sector. However, given the slim majority in the Senate and the significant growth in renewable energy investments since the IRA's passage — particularly in Republican districts — fully repealing the law may prove difficult politically.

Instead, certain benefits could be scaled back to offset the costs of other policies. This might include repealing specific credits, limiting eligibility, reducing the credit amounts, shortening credit windows or removing monetization options.

Moreover, upcoming tax reforms could involve modifications to partnership tax law, as both Republicans and Democrats have proposed legislative changes in recent years. For instance, former House Ways and Means Committee Chair Dave

Camp, R.-Mich., introduced partnership tax law reform in the Tax Reform Act of 2014, and Sen. Ron Wyden, D.-Ore., released a discussion draft of relevant legislation in 2021.

With those existing legislative frameworks to draw on, partnership tax law reform might serve as a potential revenue-generating measure.

Finally, the Republicans have also floated the idea of other tax reforms, including:

- Changes to corporate tax rates.
- Lifting the SALT (state and local tax) deduction cap.
- Exempting tips and overtime pay from income tax.

Final Thoughts

It remains unclear whether the second Trump administration will implement any of these reforms. In the meantime, multinational enterprises should monitor U.S. tax policies as well as international tax changes for any proposed reforms that could impact their organizations, potentially creating unforeseen risks. They should also bear in mind that U.S. legislation could advance rapidly through the budget reconciliation process.

Drug Pricing and Health Care Fraud Remain Key Issues

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Key Points

- It remains to be seen what priorities Robert F. Kennedy Jr. and Marty Makary might set if confirmed as HHS secretary and FDA commissioner, respectively.
- The Trump administration will likely focus on drug pricing and health care costs. Enhanced subsidies for Affordable Care Act insurance plans are set to expire and unlikely to be extended by Congress.
- Health care fraud, digital health and data privacy should remain enforcement priorities.
- FDA plans to prioritize medical device cybersecurity and AI-enabled device software guidance.
- The reauthorization of OMUFA, the over-the-counter monograph drug user fee program, could serve as a platform for addressing issues like drug shortages and FDA policy changes.

Drug pricing and health care costs are likely to remain top of mind for the incoming administration. Litigation challenges to the drug price negotiation provisions of the Inflation Reduction Act (IRA) are ongoing, and, while the pharmaceutical industry has had some procedural victories in court, the Centers for Medicare and Medicaid Services have continued implementation of the IRA.

With the public and congressional focus on bringing down health care costs, we expect the new administration to remain supportive of drug price negotiation and be undeterred by the ongoing litigation.

The current focus on the overall cost of health care, however, could be in tension with the potential increase in such costs for Americans currently relying on Affordable Care Act (ACA) plan subsidies that are set to expire in 2025 and unlikely to be extended by the incoming Congress.

We anticipate that health care fraud also will remain an enforcement focus. The Food and Drug Administration (FDA) and Department of Justice (DOJ) have signaled the following as ongoing enforcement priorities:

- Clinical trial fraud.
- Cybersecurity of health information.
- Product support activities.
- Complex product referral arrangements.

Finally, we expect that digital health and data privacy will continue to draw intense scrutiny from health regulators in the foreseeable future. For example, FDA's Center for Devices and Radiological Health intends to prioritize guidance on medical device cybersecurity and artificial intelligence-enabled device software functions for FY 2025.

HHS Secretary

If Robert F. Kennedy Jr. is confirmed as secretary of the Department of Health and Human Services (HHS), we can expect him to be a more hands-on manager of FDA issues than his predecessors. He has already staked out positions on a range of topics under FDA's purview, including:

- Revisiting vaccine policy.
- Reexamining direct-to-consumer drug advertising.
- Loosening regulations for certain alternative therapies.

But the impact of his views remains to be seen. Among other things, while President-elect Trump's pick for FDA commissioner, Marty Makary, has been a critic of the American "medical establishment," he is also known to strongly value scientific evidence.

OMUFA Reauthorization

On the FDA front, there is one must-pass piece of legislation in 2025: reauthorization of the over-the-counter (OTC) monograph drug user fee program (OMUFA), which is set to expire this year. OMUFA requires the manufacturers of OTC drugs that are marketed pursuant to an OTC monograph to pay user fees to FDA.

While OMUFA reauthorization itself is likely to be uncontroversial, user fee reauthorization bills often provide a platform for other FDA-related legislation. Some issues that have received significant public and congressional focus in recent years, and therefore may be addressed via OMUFA reauthorization, include:

- Drug shortages.
- A safe harbor for "skinny labeling" preventing patent infringement litigation against generic manufacturers that carve certain indications out of FDA-approved labeling.
- Codifying FDA policy that a biosimilar can be automatically substituted for the brand without meeting a higher bar requiring that a study be done to support interchangeability.
- Expansion of FDA's inspectional authorities, including for manufacturers of OTC monograph drugs, prompted by OTC eyedrop recalls in 2023.
- Modernization of the Dietary Supplement Health and Education Act, which would likely include requiring dietary supplements to be listed with FDA.

We also anticipate FDA will continue to pursue strategies to address the opioid epidemic under its Overdose Prevention Framework. Further, we expect FDA to continue efforts to expand the use of real-world evidence (rather than clinical trial data) to support approval of drugs and devices for rare diseases.

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Decoding Tariff Threats: What Importers Can Expect on Day 1 and Beyond

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Key Points

- President-elect Trump's tariff threats have created considerable uncertainty for importers and U.S. businesses relying on imports.
- The incoming president could impose 25% tariffs on Canada and Mexico, and 10% tariffs on China on Day 1 of his presidency using emergency powers. But he has an array of additional options.
- Other proposed tariff measures — such as 60% tariffs on Chinese imports — likely would require an investigation and more time to implement.

President-elect Donald Trump has repeatedly vowed to impose tariffs, which he has called "the most beautiful word in the dictionary," on imports from a variety of U.S. trading partners. Although it is unclear which, if any, of these measures will ultimately be taken, importers can begin to assess their risk by mapping out how different tariff scenarios might unfold.

We outline several scenarios below, based on the president's legal authorities.

Tariff Talk

During his campaign, President-elect Trump invoked tariffs as a tool to serve a range of policy objectives. He advocated imposing a 10% to 20% across-the-board tariff on all imports entering the U.S., which some have dubbed a "universal tariff," and a 60% tariff on all imports from China.

A few weeks after he was elected, President-elect Trump announced that, if the governments of Canada, China and Mexico did not address certain immigration and drug trafficking issues, he would on his first day in office impose 25% tariffs on all imports from Canada and Mexico, and an additional 10% tariff on all imports from China.

'Day 1' Tariff Risks

President-elect Trump could use the International Emergency Economic Powers Act (IEEPA) — an emergency authority typically used by presidents to impose economic sanctions — to add new tariffs on Day 1 of his presidency. IEEPA grants the president the power to impose duties in response to an emergency involving "any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States."

To invoke IEEPA, the president would need to declare a national emergency under the National Emergencies Act. Although no president has used IEEPA to impose tariffs, former President Richard Nixon used a predecessor to IEEPA to impose a 10% tariff on all imports in response to a U.S. balance-of-payments deficit.

President-elect Trump has signaled his desire to declare an emergency concerning illegal immigration and illicit drug trafficking. If he does so, that declaration potentially could serve as the predicate for imposing tariffs under IEEPA against Canada, Mexico and China.

While it is not possible to predict with certainty how events will unfold with respect to these proposed tariffs, four scenarios appear most likely:

1. **President-elect Trump does not impose tariffs on the three countries.** It is possible that President-elect Trump will announce on Day 1 that he has decided the tariffs do not need to be imposed. There is precedent for this scenario. During his first term, President-elect Trump threatened to

impose tariffs on imports of goods from Mexico based on immigration issues, then refrained from doing so after Mexico agreed to a package of immigration measures. Some observers, such as Sen. Chuck Grassley, R-Iowa, have downplayed the incoming president's more recent pronouncements and called the threatened tariffs a "negotiating tool."

2. **President-elect Trump imposes tariffs, but only on China.** The president-elect may decide to impose a 10% tariff only on Chinese imports in response to drug trafficking. The economic consequences of imposing moderate additional tariffs on Chinese imports (many of which already are subject to tariffs under Section 301 of the Trade Act of 1974) are less severe than imposing 25% tariffs on imports from Canada and Mexico.
3. **President-elect Trump imposes tariffs on all three countries, but only for a limited period.** Imposing tariffs on Canada and Mexico likely would prompt those countries to retaliate with tariffs of their own and pursue state-to-state dispute settlement under the U.S.-Mexico-Canada Agreement (USMCA). Given the economic effects of the tariffs and any retaliation, the governments of Canada, Mexico and the U.S. may be motivated to strike a deal quickly in order to remove these measures. As noted above, the U.S. may be less motivated to strike such a deal with China.
4. **President-elect Trump imposes tariffs on all three countries for an extended period, with exclusions.** This is the least likely outcome, given the economic impact of maintaining tariffs on Canada and Mexico for a substantial period of time and the challenge of administering a product-specific exclusion process with respect to all imports from these countries.

The Day After: Longer-Term Tariff Risks

In addition to his Day 1 tariff threat, President-elect Trump has asserted an array of other tariff proposals, which he could deploy at various points over the course of his administration.

Universal tariff. President-elect Trump could seek to enact his universal 10% to 20% tariff proposal using IEEPA, given the broad scope of authorities available to presidents under IEEPA. He could do so by executive order after declaring a national emergency, to immediate effect: The tariff could, in theory, be in place on Day 1. But if President-elect Trump first imposes 25% tariffs on Canada and Mexico under IEEPA for a significant period, it may not be politically feasible for him to later attempt a more expansive universal tariff.

Sixty percent tariffs on Chinese imports. During his campaign, President-elect Trump threatened to impose tariffs of 60% or more on Chinese imports for alleged unfair trade practices. Section 301 provides for the imposition of trade sanctions on foreign countries that, based on an investigation and affirmative determination by the Office of the U.S. Trade Representative (USTR), are found to have violated U.S. trade agreements or engaged in acts that are "unjustifiable" or "unreasonable" and burden U.S. commerce. In 2018, during President-elect Trump's first term, USTR imposed Section 301 tariffs on a range of goods imported from China, marking what was then a major shift in U.S. trade policy.

The incoming administration could either modify existing Section 301 tariffs or conduct a separate investigation — for instance, by continuing the investigation that the Biden administration recently launched into China's policies with respect to legacy semiconductors — to cover all or an expanded range of Chinese goods at a 60% rate.

Section 232 tariffs on strategic goods. Section 232 of the Trade Expansion Act of 1962 allows the president to impose import restrictions or tariffs based on an investigation and affirmative determination by the Department of Commerce that certain imports threaten to impair U.S. national security. In 2018, the Trump administration imposed tariffs of 25% and 10% on certain imports of steel and aluminum, respectively, using this authority. Although President-elect Trump has not expressly threatened to do so, he could use Section 232 again to impose tariffs on, for instance, automobiles and auto parts.

In the US and Europe, Export and Import Controls May Be Expanded

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Key Points

- Under the second Trump administration, the U.S. is expected to increase export control restrictions on China, particularly in the semiconductor sector, as well as to expand other China-related national security restrictions tied to U.S. investments, supply chains, cloud computing and AI modeling. Similar measures in Europe may not be forthcoming.
- The EU is set to implement its Economic Security Strategy, which includes enhancing foreign investment screening, monitoring outbound investments in advanced technologies and harmonizing export controls on dual-use goods.
- Various EU member states and the U.K. will likely continue to introduce new national export controls related to semiconductors and on emerging technologies such as quantum computing.
- We expect the U.K. and the EU to develop further import controls related to forced labor issues.

Continued Growth of US Export Controls and Trade Restrictions Expected

Unlike tariffs, export controls were not a driving theme of Donald Trump's 2024 presidential campaign. (See "Decoding Tariff Threats: What Importers Can Expect on Day 1 and Beyond.") Nonetheless, a further ratcheting up of U.S. export control restrictions on China, with a particular focus on the semiconductor sector, is likely in the short and medium term.

For instance:

- In addition to broadening the scope of items described on the Bureau of Industry and Security's Commerce Control List, the incoming Trump administration may further expand the foreign direct product rule (*i.e.*, making certain foreign-produced items subject to the jurisdiction of the Export Administration Regulations if they incorporate certain U.S. technology or are made using certain U.S. equipment), the Entity List, and other U.S. export "blacklists."
- The incoming Trump administration will have the opportunity to shape, enforce as well as potentially expand the new restrictions on U.S. outbound investment in Chinese companies active in developing artificial intelligence (AI) models, semiconductors and quantum technologies that come into force on January 2, 2025. (See our November 8, 2024, client alert "US Treasury Creates the 'Reverse CFIUS' Program, a (Limited) Great Wall on Outbound Investment.")
- The new administration will also be in a position to finalize and implement draft China-related restrictions on U.S.-connected vehicle supply chains, AI modeling and exports of "bulk" U.S. person data.

In light of the likely expansion of U.S. export controls and trade restrictions, we expect increased divergence between the U.S. and the European Union/U.K.

If a rift does indeed open between the U.S. and the U.K./EU, we expect to see a ramping up of U.S. pressure on its Western partners to strengthen their own controls on exports to China. This approach was evident in the Biden administration's efforts to encourage countries such as Japan and the Netherlands to strengthen their own export controls regimes to prevent China from acquiring equipment and technologies from other markets.

EU Economic Security Package Implementation Starting in Earnest

The European Economic Security Strategy (EESS) has been in the works since its formation was first announced in June 2023. In early 2024, the European Commission (Commission) laid out the EESS' core proposed components, which include:

- A proposal for a new regulation improving existing foreign investment screening mechanisms by conforming national rules, identifying the minimum scope for mandatory screening and extending EU screening to EU-entity investments controlled by non-EU companies.
- Identifying the risks associated with outbound investments in advanced technologies that could be used against the EU.
- Enhancing export controls on dual-use goods by harmonizing the national regimes.
- Encouraging more research and development in dual-use technologies.
- Enhancing security to protect against the misuse of research outcomes by third countries.

The EESS has been given additional salience by the new European Commission leadership because economic security was designated one of the central planks of the Commission's foreign policy agenda in the Political Guidelines 2024-2029. The new Commission will also for the first time include a specific commissioner with responsibility for Trade and Economic Security.

While the implementation of the EESS is still in its early stages, given the issue's priority, we anticipate the first concrete legislative proposals to emerge in 2025.

National Export Controls Continuing To Proliferate

We have seen a proliferation of national restrictions across Europe:

- In the U.K., new national export controls on certain specific emerging technologies (including quantum computing, semiconductor technologies and additive manufacturing equipment) were introduced in April 2024.
- Several EU member states introduced export controls on high-tech items going beyond Annex I of the EU Dual-Use Regulation.
- France imposed national controls on goods and technologies related to quantum computing and advanced electronic components such as semiconductors. This change was made under Article 9(1) of the EU Dual-Use Regulation, which permits EU member states to prohibit or impose authorization requirements on the export of dual-use items not listed in Annex I of the regulation for reasons of public security.
- Spain imposed export controls on certain semiconductor production equipment, semiconductor technology, computing technologies and additive manufacturing equipment designed or modified to produce explosive, pyrotechnic or propellant devices or shapes. The Spanish amendments were also introduced under Article 9(1).
- The Netherlands introduced export controls on its semiconductor production equipment. This change was made as a result of a trilateral agreement among the U.S., Japan and the Netherlands to impose parallel export restrictions on certain pieces of semiconductor manufacturing equipment.

Ordinarily, the multilateral export controls regime for dual-use goods would be coordinated under the Wassenaar Arrangement, which includes 42 participating jurisdictions. However, since Russia's invasion of Ukraine in 2022, Russia has vetoed additions to the control list at the multilateral level.

With the Wassenaar Arrangement procedures effectively paralyzed, it is highly likely that national export controls will continue to proliferate, either by unilateral action or in other multilateral formats (such as with the so-called "Wassenaar Minus One" group).

A Focus on Import Controls Tied to Forced Labor Concerns

The 2021 U.S. Uyghur Forced Labor Prevention Act (UFLPA) contains a rebuttable presumption that goods mined, produced or manufactured wholly or in part in Xinjiang, China, or by an entity on the UFLPA Entity List, are the product of forced labor and thus prohibited from U.S. importation.

Similar measures have passed in the EU and are being considered in the U.K.:

- **In the EU:** The EU Forced Labour Regulation (Regulation (EU) 2024/3015 on prohibiting products made with forced labour on the Union market, or the EU FLR) entered into force on December 13, 2024. The EU FLR will prohibit products made using forced labor from being sold in, or exported from, the EU market. The prohibition will apply to any product where forced or child labor is used, whether in whole or in part, at any stage of the product's supply chain. The operative provisions of the EU FLR, including the prohibition, will take effect on December 14, 2027.
- **In the U.K.:** While there is no firm legislative proposal equivalent to the U.S. and EU laws, members of both Houses of Parliament have called for such legislation, and Secretary of State for Energy Security and Net Zero Ed Miliband has confirmed that the government will be working to address the issue. Additionally, a recent House of Lords report on the reform of the U.K. Modern Slavery Act 2015 recommended that the government consider introducing legislation to ban the import of items produced by companies known to use forced labor. The government's December 2024 response indicated there are currently no planned legislative reforms to introduce such a ban, with the government instead noting that it will continue to monitor and assess the effectiveness of existing measures. Accordingly, it appears unlikely that a U.K. version of the UFLPA will be introduced in 2025.

China Merger Control Process Should Remain Navigable Even if Tensions Rise

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Key Points

- Even if U.S.-China relations become less predictable after President-elect Trump returns to office, we expect that China's merger control authority, SAMR, will continue to review and approve most deals, including those involving U.S. companies.
- The process will remain more than just a technical regulatory hurdle for deals involving the supply of technologies and products critical to the Chinese industry, because SAMR has a mandate to consider not just competition but the broader interests of China and those of a wide range of Chinese stakeholders.
- The road to completion of deals with a Chinese dimension remains navigable for deal parties that engage early and adapt strategically.

China's merger control regime has become an important tool in its arsenal to manage and respond to geopolitical tensions. While we expect China will continue to use this deal review process during the next Trump presidency to safeguard its supply chains and delay (or even obstruct) certain U.S. deals, the vast majority of transactions will likely continue to receive unconditional approvals — albeit on extended timelines.

For the most high-profile transactions relating to areas vital to China's economic or national security, however, we expect China to wield this process surgically and strategically.

> China has been sharpening its own toolkit to respond to hawkish U.S. trade policies.

In the four years since Donald Trump left office in January 2021, China has been implementing its "fortress economy" strategy in order to better withstand the changing geopolitical environment. This approach has involved:

- Improving China's supply chain resilience in key domains.
- Developing its energy independence.
- Bolstering domestic demand.
- Nurturing indigenous expertise in advanced technologies, such as semiconductors and artificial intelligence (AI).

In addition, China has been sharpening its own toolkit to respond to hawkish U.S. trade policies (see "Decoding Tariff Threats: What Importers Can Expect on Day 1 and Beyond"), not only by introducing export controls on key raw materials and processing technology (such as for germanium, gallium, tungsten and rare earth materials), but also by implementing sanctions on U.S. companies exporting technology with military potential to Taiwan. (See also "In the US and Europe, Export and Import Controls May Be Expanded.")

An important player in this environment has been and will continue to be China's key antitrust regulator, the State Administration for Market Regulation (SAMR). Its mandate includes not only consideration of "pure" competition concerns but also the impact of a transaction on China's national economy.

In practice, in the course of any given merger review, SAMR consults with and gathers broad input from a host of important Chinese stakeholders, including not only customers but also key domestic competitors, powerful government agencies and well-connected industrial associations.

For transactions in strategically important sectors — notably, including those in semiconductors, semiconductor manufacturing equipment, AI, rare earth materials, information technology (IT) and telecommunications, and agriculture — the SAMR review process can be used to extract protections and benefits for Chinese consumers, delay and encumber strategic U.S. deals, and even scuttle such deals altogether if they are seen as a true strategic challenge to China. (See also "Resilient Economy and Promises of Lessened Regulation, Lower Taxes Raise Hopes for a Surge in M&A.")

In the past, SAMR has imposed conditions on global transactions to secure the supply of strategic products or services to address stakeholder concerns, including commitments to sell products at "reasonable" prices and historical volumes.

Such behavioral remedies have been imposed in many high-profile technology-related deals in the past four years, including *MaxLinear/Silicon Motion* (2023), *Broadcom/VMware* (2023), *II-VI/Coherent* (2022), *AMD/Xilinx* (2022), *GlobalWafers/Siltronic* (2022), *SK hynix/Intel* (2021), *Cisco/Acacia* (2021), *Nvidia/Mellanox* (2020) and *Infineon/Cypress* (2020).

These measures have been used to secure favorable access to products and technologies that are considered critical for China's economic development, such as graphics processing units (GPUs) used for AI development or automotive-grade semiconductors used for autonomous driving vehicles.

Moreover, in 2022, SAMR expanded its toolkit with the introduction of a "stop-the-clock" mechanism that allows it to suspend the review clock at its discretion. This tactic affords SAMR greater flexibility to pressure deal parties on both process and substance, and can have a profound effect on deal timelines, especially for deals of significant geopolitical interest.

For example, in *Broadcom/VMware*, SAMR suspended the review clock for approximately two months and only resumed its review days before the date of the parties' final remedy proposal and conditional approval. Notably, SAMR issued its approval shortly after Presidents Joe Biden and Xi Jinping met at the APEC Summit.

But deals are not at a standstill. During the first Trump administration, China learned important lessons about just how far it could use the SAMR process before damaging its own reputation as a supporter of globalization and increased trade — a reputation it is seeking to burnish even more in the days before President-elect Trump takes office.

China refined its use of the SAMR process during the first Trump presidency, from an early broad attempt to slow all U.S. flagged deals to a far more refined approach that let through most deals (albeit sometimes with delays) that did not pose strategic or competition issues and targeted only the most sensitive and high-profile ones.

Even as the Biden administration kept up the pressure on China, SAMR nevertheless approved deals involving high-profile U.S. companies, including *Microsoft/Activision*, *Broadcom/VMware* and *MaxLinear/Silicon Motion*, all in 2023. Indeed, *Microsoft/Activision* received unconditional approval in China, in contrast to more protracted reviews in the U.S., U.K. and European Union.

In fact, the overwhelming majority of deals that SAMR reviewed in the last eight years — including those involving U.S. companies — have been approved without conditions, and, in those deals benefiting from treatment under China's Simplified Procedure, almost always in Phase I.

SAMR remains a critical but pragmatic tool to protect China's interests. Therefore, even if U.S.-China relations become more volatile during the second Trump administration, we expect that SAMR will continue to approve deals, including those involving U.S. companies, as it has done in the past eight years. The road to completion should remain navigable for deal parties that engage early and adapt strategically.

That said, navigating China's merger review process will remain more than just a procedural hurdle for global deals involving the supply of technologies and products critical to Chinese industry. As China continues to safeguard its supply chains, and with ongoing U.S. efforts to reduce its reliance on China in certain sectors, SAMR will have an important role to play as a regulator.

Political Changes Are Unlikely To Fundamentally Alter Key Sanctions

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Key Points

- Political transitions in the West notwithstanding, we expect economic sanctions to remain a key response to geopolitical issues.
- Current sanctions policy priorities are unlikely to shift markedly in the near term, and any efforts by the second Trump administration to modify U.S. sanctions against Russia could face political headwinds from Congress.
- China will be an area of increased focus for the incoming Trump administration, with export controls and tariffs rather than sanctions likely playing a leading role.
- The U.S. — and, to a slightly lesser extent, the U.K. and EU — will probably continue to stretch the extraterritorial jurisdiction of sanctions.

The new year brings with it political transitions in the West. A new U.S. administration and a Polish presidency of the Council of the European Union are about to begin their tenure, as the Labour government in the U.K. and the newly elected College of Commissioners in Brussels find their footing.

Despite these changes, we expect economic sanctions to remain a go-to response to geopolitical tensions and crises, with regulators and law enforcement agencies around the globe continuing aggressive enforcement efforts.

Nine Developments To Watch in 2025

1. Sanctions priorities should remain largely the same in the short term

Even if the second Trump administration makes changes to U.S. assistance to Ukraine, the U.S., U.K. and European Union are likely to continue using sanctions to pressure Russia in the near term. Specific goals include cutting off revenue sources, decreasing allies' reliance on Russian commodities, limiting Russian access to military and dual-use items, and combating sanctions evasion, all while maintaining market stability. Coordination on enforcement actions, sanctions targeting, licensing and derogation decisions and other behind-the-scenes intelligence-sharing will continue.

2. Enforcement actions are likely to continue to rise

If past is prologue, the second Trump administration is likely to continue aggressively pursuing sanctions-related enforcement. Likewise, enforcement of sanctions violations will remain a key priority in many EU member states and in the U.K., aided by changes to the law to make enforcement easier.

3. Expect a multifaceted approach to China

The second Trump administration is likely to use a host of economic and trade policy measures to manage the United States' position on China, with an emphasis on tariffs, further expansion of export controls and other restrictions that are more nuanced than full-scale sanctions. It remains to be seen whether and to what extent the U.S. will coordinate with the EU, U.K. and other allies on the approach to China. (See "Decoding Tariff Threats: What Importers Can Expect on Day 1 and Beyond" and "In the US and Europe, Export and Import Controls May Be Expanded.")

4. Other sanctions programs will likely gain greater prominence

Priority areas for sanctions policy-making may shift with the change in administration. The Middle East region, especially Iran, and thematic sanctions regimes

— such as those focused on human rights, corruption and cybersecurity — will likely gain greater prominence. This would be in keeping with President-elect Donald Trump's "maximum-pressure" approach to Iran during his first term and the movement toward using thematic sanctions more frequently to counter threats or highlight particular policy objectives. The U.K. and EU will likely take the second Trump administration's lead on these points to some extent, for example in relation to extending certain thematic sanctions regimes, but policy divergences will likely remain in respect of Iran. Recent political developments in Syria could also result in a change in the sanctions position in relation to that country.

5. There is potential for disagreements on sanctions between the U.S. political branches

Because the use of sanctions as a foreign policy tool continues to garner broad bipartisan, bicameral support in the U.S., any moves to modify U.S. sanctions on Russia (or in other areas) in the second Trump administration may face pushback from Congress.

6. The use of "extraterritorial" sanctions will be expanded

The U.S. has long viewed sanctions as reaching activities that occur outside the U.S. when they touch the U.S. financial system or cause U.S. persons to violate them. "Secondary" sanctions — for which there is no U.S. jurisdictional nexus — have become a prominent feature in the Russia and Iran sanctions programs, among others, as a means to influence the behavior of non-U.S. persons. The U.K.'s and EU's broad Russia-related sanctions authorities, coupled with trade and financial measures with extraterritorial reach (including the EU's focus on non-EU subsidiaries), show they have adopted a similar approach. We expect the U.S., U.K. and EU to continue to push the outer boundaries of sanctions jurisdiction.

7. Compliance challenges will increase under growing regulatory requirements and expectations

As sanctions and export controls have become more complex and nuanced, and as regulators have turned increasingly to financial institutions and other companies to ensure effective implementation of those measures, the costs and operational burden of compliance that fall on the private sector have grown apace. We expect regulators and law enforcement agencies around the globe will continue to view the private sector as the "first line of defense." Organizations should therefore be proactive in assessing and managing risk and be prepared for worst-case scenarios like dawn raids — unannounced inspections — and government investigations.

8. Whistleblowing will be a key method of intelligence-gathering

Recent whistleblower laws in the U.S. designed to elicit reports of sanctions violations are reportedly bearing fruit, and the U.K. is considering enhancing its legal framework in this respect. Companies should ensure they have strong whistleblower policies in place to encourage the reporting of issues internally so they can be investigated and addressed before they make their way to a government regulator.

9. Sanctions will be one of many national security-related tools for deployment

For more than a decade, sanctions have seemingly been the first port of call for governments when responding to foreign policy and national security concerns. While they will undoubtedly remain a key tool in the foreign policy toolbox for years to come, we anticipate export controls, foreign investment reviews, supply chain regulations and — in the second Trump administration — perhaps other, less predictable methods will become increasingly important in the U.S. and beyond. The use of countersanctions and other similar measures by jurisdictions targeted by the U.S. and its partners will likely grow.