

SHEARMAN & STERLING

BANKING UNDER BIDEN

The 2020 Election Results and Implications for the Financial Services Industry
November 9, 2020



ELECTION 2020

The 2020 Election Results and Implications for the Financial Services Industry

- Former Vice President Joseph R. Biden, Jr. has secured more than the necessary 270 electoral votes, based on preliminary state tabulations and reporting by prominent U.S. media organizations. Barring extraordinary judicial interventions, Mr. Biden will become the 46th President of the United States.
- In addition to the White House, Democrats will retain control of the U.S. House of Representatives. Control of the U.S. Senate will not be known until the new year if two run-off elections are required in Georgia, as currently appears to be the case.
- As President, Mr. Biden will have several opportunities to nominate federal financial regulatory agency heads and other officials for key posts. In the near term, Mr. Biden is expected to announce his intent to nominate individuals for several prominent positions, including as Treasury Secretary and the chair of the Securities and Exchange Commission.
- The regulatory agendas for U.S. financial regulatory agencies will undoubtedly change in 2021 to reflect the priorities of a Biden Administration.

POTENTIAL TURNOVER AT THE FINANCIAL REGULATORY AGENCIES

FDIC	Federal Reserve	SEC	CFTC
Jelena McWilliams (R) Chairman	Jerome Powell Chairman	Jay Clayton (I) SEC Chair	Heath Tarbert (R) Chairman
Vacant Vice Chairman	Richard Clarida Vice Chairman	Elad Roisman (R) Commissioner	Rostin Benham (D) Commissioner
Martin Gruenberg (D) Director	Randy Quarles Governor, Vice Chairman for Supervision	Hester Peirce (R) Commissioner	Brian Quintenz (R) Commissioner
Brian Brooks (R) Acting Comptroller, OCC	Lael Brainard, Governor	Allison Herren Lee (D) Commissioner	Dawn Stump (R) Commissioner
Kathy Kraninger (R) Director, CFPB	Michelle Bowman, Governor	Caroline Crenshaw (D) Commissioner	Dan Berkovitz (D) Commissioner
	Governor (Vacant)		
	Governor (Vacant)		
OCC	Treasury Department	CFPB	OMB
Brian Brooks Acting Comptroller	Steven Mnuchin Treasury Secretary	Kathy Kraninger Director	Russell Vought Director
National Economic Council		National Credit Union Administration	
Larry Kudlow		Rodney Hood	

The President is likely to appoint someone new or this person will step down from their role

QUICK TAKES

How the Financial Services Regulatory Landscape May Change

President-elect Biden and his appointees have an opportunity to shift the regulatory pendulum in new and significant ways for the U.S. financial services industry. Below we identify possible areas of priority, but careful attention should be given to statements from President-elect Biden and other officials during the transition.

- Additional COVID-19 Related Actions
- Consumer Protection Related Matters
- Bankruptcy Policy
- Money Market Regulation
- FSOC's Approach to Nonbank Financial Institutions
- Credit Access and Housing Finance Reform
- Climate Change

QUICK TAKES

How the Financial Services Regulatory Landscape May Change

▪ **Additional COVID-19 Related Actions**

- A central focus of President-elect Biden and the new Congress will be on additional economic measures tied to the unprecedented challenges caused by the COVID-19 pandemic. A Biden Administration may pursue:
 - Quicker deployment of funds authorized by the CARES Act;
 - Expanded emergency lending facilities under Section 13(3) of the Federal Reserve Act; and
 - Greater flexibility for loan forgiveness under the Paycheck Protection Program.

▪ **Consumer Protection Related Matters**

- New leadership at the CFPB should be anticipated. In June 2020, the Supreme Court held, in [Seila Law v. CFPB](#), that the CFPB's Director is removable by the President at will.
- The CFPB under a Biden Administration would have wider supervisory and enforcement priorities than currently. Among other areas, there would likely be greater interest in consumer lending practices.
- A Biden Administration could also pursue legislation to limit predatory interest rates on non-residential consumer lending and seek to reverse the current administration's efforts to remove regulatory burdens applicable to payday lenders and debt collectors.
- Biden has [supported](#) establishing a new credit reporting agency, which would aim to "minimize racial disparities."

▪ **Bankruptcy Policy**

- As a candidate, Biden [adopted](#) Sen. Elizabeth Warren's bankruptcy policy, a core aspect of her own candidacy.
- Should bankruptcy reform be pursued legislatively, a Biden Administration may seek to remove restrictions on the discharge of student loan debt in bankruptcy, among other changes.

QUICK TAKES

How the Financial Services Regulatory Landscape May Change (contd.)

▪ **Money Market Regulation**

- In response to the stress on short-term funding markets early in the coronavirus pandemic, Randal Quarles, the Federal Reserve Vice Chair of Supervision, [stated](#) in October 2020 that reforms may be needed.
- The Financial Stability Board (FSB), which Quarles leads, has set up a steering group to “better understand the role that vulnerabilities stemming from nonbank financial institutions played in those events and to define a work program to address such vulnerabilities during 2021.”
- President-elect Biden will likely seek to implement, at least in part, the recommendations made by the FSB panel in order to avoid the prospect of a run on short-term funding markets as occurred during the 2008 financial crisis and during the early stages of coronavirus pandemic.

▪ **FSOC’s Approach to Nonbank Financial Institutions**

- The Financial Stability Oversight Council (FSOC), which is chaired by the Treasury Secretary, will almost certainly have a larger role under a Biden Administration. During the Trump Administration, the FSOC has shifted dramatically from its approach of designating nonbank financial firms as “systemically important,” even rescinding prior designations. Instead, the FSOC has pursued an “activities”-based approach toward the oversight of these firms, but has yet to designate any activities as risky.
- A reconstituted FSOC could take a more searching approach to the growth of nonbanks in the mortgage market as well as the asset management industry’s increasing significance to financial markets and the broader economy.

QUICK TAKES

How the Financial Services Regulatory Landscape May Change (contd.)

▪ **Credit Access and Housing Finance Reform**

- Biden has [pledged](#) to strengthen and expand the Community Reinvestment Act, the 1977 law that requires banks to meet the credit needs of their communities, including low- and moderate-income neighborhoods. The CRA applies to banks, but non-bank or fintech lenders are not covered. Biden has proposed to fill this gap, including by expanding the CRA to apply to mortgage and insurance companies. Biden has also proposed adding a requirement for financial services companies to provide a statement outlining their commitment to the public interest.
- The provision of basic banking services through the U.S. Postal Service has generated attention in the past year. Postal banking, which was identified in a 110-page policy [document](#) released by the Biden-Sanders Unity Task Force prior to the Democratic National Convention this summer, is part of a larger effort to expand equitable access to banking and financial services, especially for “unbanked” and “underbanked” communities that may currently lack access to physical banking locations.
- Biden may take a different approach to Fannie Mae and Freddie Mac, which have remained in conservatorship since the Great Recession. While the Trump Administration has proposed a plan to release these enterprises from conservatorship, a Biden Administration may consider new ways to use them for expanding homeownership. In addition, Biden has proposed reversing Trump-era policies that weaken fair lending and fair housing protections for homeowners.

QUICK TAKES

How the Financial Services Regulatory Landscape May Change (contd.)

▪ **Climate Change**

- Combatting [climate change](#) was a key theme of the Biden Campaign and a Biden Administration is expected to pursue climate change issues in various ways, from rejoining the Paris Climate Agreement to supporting investment in clean energy infrastructure.
- For the financial services industry, it is possible that the banking agencies and market regulators under a Biden Administration will call for greater integration of climate-related considerations into risk management and planning. Influential Democratic lawmakers have already advocated strongly for greater disclosures from public companies on climate change risks to their businesses.
- At the state level, in late October 2020, the New York State Department of Financial Services (DFS) [warned](#) of the “unprecedented” financial risks that are tied to climate change, and said financial institutions should start integrating the financial risks from climate change into their governance frameworks, risk management processes, and business strategies.

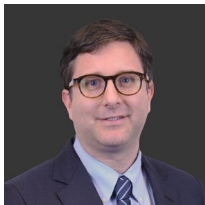
▪ **Other Potential Areas of Interest to Financial Institutions**

- Increased enforcement activity across all the agencies
- Amplified bank capital and liquidity requirements
- Expanded dividend restrictions
- Adoption of incentive-based compensation rules
- Anti-money laundering related reform and new beneficial ownership reporting
- New consumer privacy and data security standards
- Greater scrutiny of fintechs’ consumer practices

SHEARMAN & STERLING TEAM



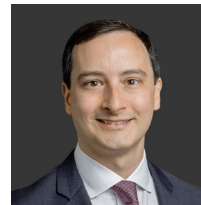
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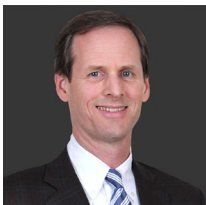
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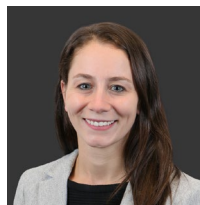
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