CWD: Study Trump's appointments

The law firm has attempted to shed light on Trump's financial deregulation aims through the lens of his appointments. It won't be easy

Anthony Mansfield, partner at Cadwalader, Wickersham & Taft

Donald Trump's election victory has caused the market to seek out answers regarding the regulatory implications of his appointment. And according to a research memo from partners at Cadwalader, Wickersham & Taft, the key is studying not Trump himself, but his appointments.

Trump is a disruptive force – but inconsistent. He's often on record contradicting his own policy pledges, or firing out controversial tweets today only to row back on his statements tomorrow.

Nonetheless, in the area of financial regulation some key themes have emerged: deregulation is a broad aim of the nascent Trump administration, and the man has tended to attack the regulators. With an eye on infrastructure spending, Trump has thus indicated his distaste at Federal Reserve independence (in return, Fed Chair Janet Yellen has reminded US lawmakers of a potential increase in national debt). Plus the controversial Consumer Financial Protection Bureau (CFPB) – long derided for perceived overreach by a concerned GOP – is widely expected to come under fire after January.

Yet those are only broad brush themes. To really dig into the implications of the Trump administration, the partners at Cadwalader, Wickersham & Taft are studying the president-elect's actions.

"The most expeditious way President-elect Trump can change many of the financial regulators' policies is by taking his foot off the gas pedal and by changing who's in charge," said Scott Cammarn, partner at Cadwalader, Wickersham & Taft.

Changes at the top

President-elect Trump has repeatedly said he'll aim for a de-regulated US environment. High on his list is a repeal of the 2010 Dodd-Frank act, a law many Republicans (and no small number of Democrats) associate with the most cumbersome regulatory aspects of the Obama years. But a wholesale repeal of Dodd-Frank is far easier said than done, which leads to the question: how exactly will Trump deregulate?

Beginning in January, and absent immediate legislative changes, the new president will have a wild card – changes at the top of the main US regulators.

"On the Commodity Futures Trading Commission [CFTC] side, there's an opportunity to see these changes playing out potentially very immediately," said Anthony Mansfield, partner at Cadwalader, Wickersham & Taft.

Even at this late stage in the US political calendar, the CFTC has been considering three potential rules that would apply to derivatives: the regulation of automated trading, position limits and certain capital requirements. And for months, incumbent chairman Timothy Massad has been working at pace. "Now, there's a question about whether during a transition to the Trump administration that agenda will continue to go ahead," said Mansfield.

Key takeaways

- **Partners at Cadwalader Wickersham & Taft are studying Trump's likely regulatory appointments;**
- **Trump has a stated aim of financial sector deregulation;**
- **The repeal or replacement of Dodd-Frank will, however, take time, so Trump's short-term approach to deregulation will be making changes at US regulators;**
- **The CFTC and OCC will likely be the first to see changes, with the CFPB soon to come under fire.**

Instead, House Republicans are encouraging US agencies to stand down on further rule-making pending the new administration. The chairman of the House Agriculture Committee, Mike Conaway, for example, recently urged the CFTC to stand down, in particular on position limits, automated trading and registration rules for institutions that trade in derivatives.

In this climate, it may be that chairman Massad stands down before the end of his term, which ends in April 2017, making way for Republican commissioner Christopher Giancarlo. The Republican might be positioned, in turn, to serve as acting chairman. According to Mansfield, if that happens, it may well impact the CFTC's willingness to press forward with rule-making under the new Trump administration.

And Trump has another card to play, one that reflects how he may treat the other US regulators too: the CFTC is comprised of five commissioners, but currently, only three serve. As long as he maintains party balance, the new US president will be at liberty to select less regulation-minded commissioners and – in effect – prime the commission with the new, trumpian view of rule-making: less is more.

OCC, CFPB

The new Trump administration will also be able to change the direction of the

Office of the Comptroller of the Currency (OCC). Incumbent Comptroller Thomas Curry's term also expires in April. Trump can ask for his resignation or his term will otherwise expire a mere three months after the inauguration. According to Cammarn, such a change would be significant; the OCC is the regulator for the vast majority of bank assets in the US and the six largest banks in the US are all national banks.

But the real fireworks are likely to occur with any changes at or to the CFPB. The DC circuit and its recent court decision decided that the CFPB needs to be re-construed as an executive agency, one where the director is capable of being removed at will.

"Mr Trump could easily remove and replace CFPB Director Cordray with someone who perhaps might take a more balanced approach at the CFPB. That can occur fairly swiftly," said Cammarn. Of course, there may be a battle over the confirmation of any suggested replacement – the CFPB has been treated as a controversial topic for a long time. But Cordray can be removed at speed.

Fed, FDIC

As 2017 unfurls, they should be aware that changes in the other US bank sector agencies will likely take more time than those described above. Both the Fed and Federal Deposit Insurance Commission (FDIC) are designed to be more immunised from political influence. Fed governors can't be removed at will, but there are still two open seats, including the critical Vice Chair of Supervision. "Mr. Trump could add two Fed governors with a different perspective on bank regulation," said Cammarn.

Which leaves the FDIC. Its board is derived to a large extent of the other agencies, so changes at FDIC tend to occur after changes at regulators such as the OCC and CFPB have been made. Cammarn expects that, later in 2017 and 2018, Trump will be able to change the other members of FDIC board, subject to the limit that no more than three of its five members can come from the same party.

"In the end, change by appointment could be Mr Trump's low-hanging fruit," said Cammarn.

Scott Cammarn, partner at Cadwalader, Wickersham & Taft.