Client Alert

All Financial Regulation in the U.S. Now Subject to Review under February 3, 2017 Executive Order Issued by the President

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Seyfarth Synopsis: *Hours after the inauguration of President Trump, the White House issued a memorandum which imposed a 90-day delay on regulations which had not yet taken effect. As far as existing financial services law and regulation in the U.S. however, President Trump then issued an Executive Order on Friday, February 3, 2017 — which the White House modified slightly since February 3 — requiring the U.S. Treasury Secretary to confer with federal agency leaders and brief the President on all financial services law in the U.S. that either promotes or inhibits seven "Core Principles." These principles and immediate international reaction are summarized in this Alert.*

On February 3, 2017, President Trump issued an Executive Order directing the U.S. Treasury Secretary to "consult with the heads of member agencies of the Financial Stability Oversight Council" (FSOC) and to report to President Trump within 120 days of the Executive Order, and periodically thereafter, the extent to which U.S. law and regulation promotes or inhibits the following seven Core Principles:

(a) empower Americans to make independent financial decisions and informed choices in the marketplace, save for retirement, and build individual wealth;

(b) prevent taxpayer-funded bailouts;

(c) foster economic growth and vibrant financial markets through more rigorous regulatory impact analysis that addresses systemic risk and market failures, such as moral hazard and information asymmetry;

(d) enable American companies to be competitive with foreign firms in domestic and foreign markets;

(e) advance American interests in international financial regulatory negotiations and meetings;

(f) make regulation efficient, effective, and appropriately tailored; and

(g) restore public accountability within Federal financial regulatory agencies and rationalize the Federal financial regulatory framework.[1]

[1] "Presidential Executive Order on Core Principles for Regulating the United States Financial System," Executive Order, The White House (Feb. 3, 2017) (the "Executive Order")(the seven enumerated core principles are collectively, the "Core Principles").

As this alert goes to press, this is known with certainty:

- The Executive Order does not repeal or even recommend the repeal of the Dodd-Frank Wall Street Reform and Consumer Protection Act;
- The action required by the Executive Order consists only of a series of briefings to be made by the Treasury Secretary to the President after the Treasury Secretary confers with federal agencies and bodies such as the Commodity Futures Trading Commission (CFTC), the Securities and Exchange Commission (SEC), banking agencies and the Federal Reserve; and
- After consulting with the heads of FSOC's member agencies, the Treasury Secretary is directed to report within 120 days of the Executive Order the extent to which the entire gamut of U.S. law and regulation relating to financial services in the United States either promotes or inhibits the Core Principles.

Within three hours of the President's signing the Executive Order, media reports were replete with headlines along the lines of "Trump Begins Dismantling Dodd-Frank."[2] Representatives of the European Commission were reported to have stated that "President Donald Trump's intention to dismantle the Dodd-Frank Act risks unbalancing global regulation and threatens financial stability achieved since the banking crisis."[3]

Among other new requirements related to executive compensation, the Dodd-Frank Act established CEO pay ratio disclosure rules, which became effective with the first fiscal year beginning on or after January 1, 2017. For companies with a calendar year based fiscal year, companies are required to undertake efforts to implement the rule so that disclosures can be made during the 2018 proxy season. On Monday, February 6, 2017, citing "unanticipated compliance difficulties" being encountered by companies, acting SEC Chairman Michael S. Piwowar requested that comments on implementation efforts be submitted within the next 45 days. He also directed the SEC staff to reconsider implementation of the pay ratio disclosure rules based on the comments, which could include a determination to issue further guidance or relief. While the announcement did not specifically reference the Executive Order, the proximity and nature of the announcement sets the stage for reconsideration of the pay ratio disclosure rules.

If you would like further information, please contact your Seyfarth attorney, or Gordon Peery at *gpeery@seyfarth.com*.

Readers seeking additional background on derivatives are encouraged to contact the author of this alert and consult *The Post-Reform Guide to Derivatives and Futures* (Wiley 2012) (*Guide to Derivatives*), which discusses collateral, trading, documentation and Title VII of Dodd Frank, which is subject to review under the terms of the February 3, 2017 Executive Order. Excerpts from, or limited copies of the *Guide to Derivatives* may be available from the author at no cost and questions concerning these far-reaching rules are welcome.

[2] *See, e.g.*, "Trump Begins Dismantling Dodd-Frank Wall Street Reform Passed in 2010 After Financial Crisis," CNN Wire accessed on February 2, 2017 at http://ktla.com/2017/02/03/trump-begins-dismantling-dodd-frank-wall-street-reform-passed-in-2010-after-financial-crisis/)

[3] Mark Taylor, "Dodd-Frank Tinkering Risks Global Stability, EU Warns Trump," Law 360, accessed on February 7, 2017, at https://www.law360.com/banking/articles/888793/dodd-frank-tinkering-risks-global-stability-eu-warns-trump?nl_pk=87062817-1dae-4eae-a365-38f2d7e4a53c&utm_source=newsletter&utm_medium=email&utm_campaign=banking.