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Expectations for the Biden Administration's Financial Services Regulatory Policy Agenda[1]

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INTRODUCTION

President Joe Biden has now been in the White House for two months. His administration's economic and financial policies so far have been guided by the priorities he has set out as the key goals of his administration: COVID-19 recovery (both from a health and economic perspective), tackling climate change, and addressing racial inequality.

While Democrats have control of both the Senate and House of Representatives, their majorities are razor thin. Such a margin makes it unlikely for the Democrats to push financial reform through legislation. It is also unlikely that the administration or Congress will make significant financial reform an early focus given the stability of the U.S. financial system and a desire to prioritize more pressing issues.

Therefore, financial regulatory reform is likely to be driven by personnel appointed by President Biden, the regulatory agencies themselves and/or, in some cases, when urgent, via Executive Order. This paper lays out the key personnel decisions for the Biden administration and what we expect will be his key financial regulatory policies.

Main Takeaways

- *President Biden's stated priorities –* ***fighting COVID-19, spurring economic growth, addressing climate change, and promoting racial equality*** *– will inform his administration's financial services agenda.*
- *We do not expect comprehensive financial reform to be a near-term priority for Congress; rather,* ***policy will primarily be left to the agencies****.*
- *At the agencies,* ***sustainable finance will be at the forefront*** *of the agenda. Regulators are also expected to review and consider the prudential course of the past four years.*
- *The* ***U.S. is expected to continue playing a significant leadership role internationally,*** *including within the FSB, Basel Committee, IAIS, and IOSCO.*

PERSONNEL CHANGES

While President Biden was able to replace the Treasury Secretary and some of the leaders of the regulatory agencies quickly, each agency has its own unique governance structure that will cause some appointments to take time.

[1] The original version of this paper was published on January 15, 2021. This paper was updated in March 2021to incorporate early Biden administration developments.
[2] With contributions from Mary Frances Monroe, Director, Insurance Regulation & Policy, IIF.

One of President Biden's first cabinet appointments was Janet Yellen for Secretary of the Treasury; she was sworn in on January 26. Secretary Yellen is a former Chair of the Federal Reserve who is widely respected and considered relatively moderate. Her early focus has been on extensive stimulus policies, such as passing the American Rescue Plan, and financial regulation will be a longer-term project. Janet Yellen's knowledge of financial regulation and supervision is extensive, and she will lead interagency coordination as Chair of the Financial Stability Oversight Council (FSOC). Adewale ("Wally") Adeyemo, who served as G20 Sherpa and Deputy National Security Advisor under President Barack Obama, was confirmed by the Senate as Deputy Treasury Secretary.

Heads of U.S. Agencies

Agency	Title	Biden's nominee
U.S. Treasury	Secretary	Janet Yellen (confirmed)
Federal Reserve Board of Governors	Chair	N/A – Jerome Powell in office until Feb. 2022
Federal Reserve Board of Governors	Vice Chair for Supervision	N/A – Randal Quarles in office until Oct. 2021
Commodity Futures Trading Commission	Chair	TBD
Consumer Financial Protection Bureau	Director	Rohit Chopra
Federal Deposit Insurance Corporation	Chair	N/A – Jelena McWilliams in office until June 2023
Office of the Comptroller of the Currency	Comptroller	TBD
Securities and Exchange Commission	Chair	Gary Gensler

Chair of the Federal Reserve, Jerome Powell, will remain in his seat until 2022 and may be nominated to serve as second term by President Biden. Vice Chair for Supervision Randal Quarles is expected to be replaced in October 2021. Until then, Vice Chair Quarles will also remain Chair of the Financial Stability Board (FSB) and will be succeeded by current FSB Vice-Chair Klaas Knot of De Nederlandsche Bank. Of the seven Fed governor positions, one seat is vacant, which gives President Biden some ability to start shaping the Fed.

Gary Gensler, a former Chairman of the Commodity Futures Trading Commission (CFTC) and Under Secretary at the Department of the Treasury, was nominated by President Biden to lead the Securities and Exchange Commission (SEC). He has been confirmed by the Senate Banking Committee and is currently waiting for confirmation by the full Senate. Rohit Chopra, President Biden's nominee to lead the Consumer Financial Protection Bureau (CFPB), is also waiting for the Senate to vote on his nomination. President Biden is expected to nominate a new Comptroller of the Currency and new Chairman of the CFTC shortly; both agencies are currently being led by acting directors. The Chairman of the Federal Deposit Insurance Corporation (FDIC), Jelena McWilliams, has stated that she will remain in her position until 2023; however, it is possible she will step back to become Vice Chair as the Democrats will hold the majority of FDIC board seats.

President Biden has also announced his appointments for economic advisors in the White House. Brian Deese now leads the National Economic Council (NEC); he worked as a senior advisor in the Obama administration and then in private sector sustainable investing. David Kamin and Bharat Ramamurti have been appointed as deputy NEC director and deputy NEC director for financial reform and consumer protection, respectively. Cecilia Rouse, a Princeton professor who has focused on inequality and labor economics, was confirmed by the Senate to head up the Council of Economic Advisors. The White House has yet to announce a new nominee to head the Office of Management and Budget.

CONGRESSIONAL OUTLOOK

The Senate Banking Committee and House Financial Services Committee are the two congressional committees that are responsible for oversight of the financial services sector. These committees advance financial regulation-related legislation, hold hearings, and the Senate Banking Committee votes on nominees for the agencies they oversee. Senator Sherrod Brown (D-OH) is Chair of the Senate Banking Committee now that Democrats control the Senate. He is likely to advocate for tougher bank regulation along with financial policies that promote sustainability and racial equality. Senator Pat Toomey (R-PA), an avid supporter of free markets, serves as ranking member of the committee. Representative Maxine Waters (D-CA) serves as chair of the House Financial Services Committee because Democrats continue to hold the majority in the House of Representatives. Representative Waters sent a letter to then President-elect Biden in December 2020 outlining her priorities – including consumer protection, tightening prudential regulations, reengaging with multilateral organizations, implementing diversity and inclusion initiatives, and reimposing Volcker Rule provisions.[3] Representative Patrick McHenry (R-NC) is ranking member of the committee.

CLIMATE CHANGE

One of President Biden's key priorities, addressing climate change, can be expected to have a considerable impact on his administration's financial agenda and will signal a significant change from his predecessor's work. The U.S. has rejoined the Paris climate agreement and will pursue the reduction of carbon emissions. Furthermore, U.S. financial regulators will likely engage internationally on climate risk and sustainability standards and will work closely on a bilateral and multilateral basis with regulators from other countries.

The Federal Reserve formally joined the Network for Greening the Financial System (NGFS) in December 2020, and the NGFS 2020-2022 work program includes topics such as cataloging regulatory efforts at climate-related scenario analysis, analyzing whether a risk differential exists between "green" and other assets, and identifying whether there are data gaps in the assessment of climate-related risks. In addition, relevant policy analysis and ultimately recommendations or best practices for banking supervisors will be developed through the global standard setting bodies such as the Basel Committee on Banking Supervision (BCBS), which has a Task Force on Climate-related Financial Risks that is co-chaired by Kevin Stiroh from the Federal Reserve Bank of New York. U.S. financial regulators, particularly the Fed, the SEC, and the state insurance regulators through the National Association of Insurance Commissioners (NAIC) are expected to focus on a number of key areas, such as (i) encouraging the incorporation of climate risk in financial decisions, (ii) standardizing disclosure, (iii) introducing climate scenario analysis exercises, (iv) identifying sustainability, resilience, and mitigation solutions, and (v) considering pre-disaster mitigation and resiliency.

Regulatory agencies have already announced climate change and environmental, social, and governance (ESG) focused efforts. The Federal Reserve has launched a Supervision Climate Committee and a Financial Stability Climate Committee, and the CFTC launched a Climate Risk Unit; these groups are intended to address climate policy for their respective agencies. The SEC started up a Climate and ESG Task Force, issued a consultation on ESG disclosures, and Acting Commissioner Allison Herren Lee stated her intention to have the SEC develop comprehensive ESG disclosure frameworks. Additionally, the Office of the Comptroller of the Currency (OCC) paused the publication of the Fair Access to Financial Services rule which raised concerns that U.S. banks would not be able to apply discretionary criteria, including ESG criteria, in their lending decisions.[4]

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[3] Chairwoman Maxine Waters, House Financial Services Committee, "Letter to President-elect Biden" December 4, 2020.
[4] OCC, "Proposed Rule Would Ensure Fair Access to Bank Services, Capital, and Credit" November 20, 2020.

The Biden administration Department of Labor (DoL) has announced it will not enforce the Trump administration rule that would require retirement plan fiduciaries to make investment decisions based only on financial factors, thereby forbidding the prioritization of non-pecuniary goals – such as ESG issues – in investment decisions.[5]

PRUDENTIAL REGULATION

President Biden's appointed regulators are expected to call for stricter capital and liquidity requirements, especially for large banks, and to evaluate and consider changes to some rules such as those concerning stress testing, leverage requirements, living wills, and dividend/stock buyback restrictions though changes are likely to be relatively minor. It is possible that elements of the Volcker Rule which were changed under President Trump will be reevaluated, although given the bureaucratic hurdles involved in additional changes and years of amending the rule, agencies may leave it as it is.[6] The Federal Reserve has been developing new tools and policies that will be continued under the current administration. First, Basel III implementation plans will likely be announced this year. Additionally, the Fed has been putting together a real-time payments system which will continue to be developed. Work will also continue on branch liquidity requirements for foreign banks, according to recent remarks from Federal Reserve Board of Governors General Counsel Mark Van Der Weide. A new priority area for the Fed and other regulators is fighting racial inequality and reaching underserved communities.

NON-FINANCIAL RISK

Anti-money laundering/countering the financing of terrorism (AML/CFT) may be a focus of the Biden administration's financial regulatory agenda. President Biden has said he will fight global corruption, which he views as a danger to U.S. national security and will do that in part by bringing transparency to the international financial system and seizing stolen assets, though further details have not been released.[7] The Biden administration Treasury Department is responsible for implementing elements of the Anti-Money Laundering Act of 2020 which includes requiring disclosure of beneficial ownership information to Treasury's Financial Crimes Enforcement Network (FinCEN), which will prevent the formation of anonymously held shell companies. Cyber risk and operational resilience are additional areas where work is expected to continue given experiences during recent months, including lessons learned from the COVID-19 pandemic and the recent SolarWinds hack, wherein the perpetrators were able to spy on a broad range of U.S. government and commercial networks. President Biden has said that he will make cybersecurity a top priority across the government and pursue collaboration with the private sector, a goal that is very likely to inform financial regulators' agendas.

DIGITAL FINANCE

Innovation and technology in finance are likely to feature in the Biden administration priorities, particularly (i) the regulatory and supervisory framework for stable coins and crypto currencies, (ii) digital identity issues and the links to financial inclusion and data privacy, and (iii) the role of "big tech" in finance.

NON-BANK FINANCIAL INTERMEDIATION

We expect the Biden administration to focus on non-bank financial intermediation (NBFI). Given market volatility in March 2020, interest in greater regulation of NBFI has grown internationally at the FSB and International Organization of Securities Commissions (IOSCO). Since leaving the Fed, Janet Yellen has warned about risks

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[5] Department of Labor, "U.S. Department of Labor Announces Final Rule to Protect Americans' Retirement Investments" October 30, 2020.
[6] Harvard Law School Forum on Corporate Governance, "Financial Institution Regulation Under President Biden" November 16, 2020.
[7] Joseph R. Biden Jr., "Why America Must Lead Again" Foreign Affairs, March/April 2020.

emanating from NBFI and has been an advocate for a more robust FSOC (which she now chairs as Treasury Secretary) that has the authority to designate certain non-bank financial institutions as posing systemic risk to the financial sector. In February, the SEC released a request for comment on potential money market fund reform measures.

INSURANCE

Under the Biden administration, insurers can generally expect higher levels of prudential supervision, as well as a focus on market conduct issues such as sales practices and risk-based pricing. ESG goals will likely take an important role in supervision as sustainability and equality are emphasized by the administration. There are specific proposals, largely supported by Democrats, that are worth watching. For instance, the Addressing Climate Financial Risk Act, introduced by Senator Dianne Feinstein (D-CA) in December 2020, would mandate a Federal Insurance Office (FIO) report on insurance regulation and climate risk, with recommendations on how to modernize and improve climate risk insurance regulation in the U.S.[8] Given the pivotal role of (re)insurers in providing property and casualty (P&C) and natural catastrophe (nat cat) cover, the Biden administration plan to prioritize climate risk will have a significant impact on the industry. Tighter environmental controls and regulations will require even more rigorous modeling of P&C and nat cat risk and will likely impact the pricing and availability of cover. On the other hand, efforts to promote infrastructure and clean energy investment will provide new opportunities for insurers to finance a green future.

SETTING THE INTERNATIONAL AGENDA

The new administration will also play an important role internationally in influential forums like the G-7 and G-20, which help shape global trends and strengthen international economic and security policy. President Biden's team has been clear that they want the U.S. to be a leader in cooperation and coordination in both multilateral institutions such as the International Monetary Fund (IMF) and World Bank and in standard setting bodies such as the Bank for International Settlements (BIS), the BCBS, IOSCO, and the International Association of Insurance Supervisors (IAIS). They will also look to continue playing a leading role at the FSB even with Randal Quarles stepping down as Chair in October.

[8] Senator Dianne Feinstein. "Feinstein Introduces Bill to Minimize Climate Change Risk in Financial System" December 17, 2020