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Post-Election Shift: Securities Industry Anticipates Business-Friendly SEC Under Trump Administration

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Post-election, securities industry professionals are pondering the new administration's impact on the regulatory environment and their businesses. While there is no sure outcome, many comfortably predict that under the Trump administration, the Securities and Exchange Commission (SEC or Commission) will be a more business-friendly environment, particularly with respect to digital assets.

As a first guidepost to anticipated change, SEC Chairman Gary Gensler announced on November 21 that he will step down effective January 20, 2025, Inauguration Day. In addition, a new leader is expected for the SEC Division of Enforcement since Director Gurbir Grewal's departure on October 11, 2024. In the interim, Acting Director Sanjay Wadhwa has promised that the Division will continue its enforcement push.

Chairman Gensler's realm was noted for his extensive rule-making agenda. Several of these sweeping rules were met with industry opposition and challenges in court. On November 21, US District Judge O'Connor in Texas vacated the SEC's "Dealer Rule," recently adopted to significantly expand the number of entities that may be required to register as a "dealer" or a "government securities dealer." If President-Elect Trump appoints an SEC leader who leans more towards securities businesses, this may be a foreshadowing of other new rules being reconsidered or implementation dates delayed. Further, rules that were proposed and not yet adopted, such as Regulation Best Execution and the Order Competition Rule, are not likely to be adopted by a Republican-controlled Commission. Controversial rulemaking is not likely to go forward in the "lame duck" period before the Inauguration and Chairman Gensler's departure, given the requirement under the Congressional Review Act to submit rulemaking enacted after an election for review by the Senate and House of Representatives and the ability to abrogate retroactively such rulemaking by Congressional resolution. The risk of such action is stronger under a Republican-led Senate and House of Representatives.

It is still too early to tell what priorities the new administration may set and what agenda a future SEC Chair may follow. However, most practitioners are hopeful that a focus on high financial penalties and regulation-by-enforcement may be waning.

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