

The Legal Implications of the New Administration's First Quarter in the White House CLE

April 17, 2025

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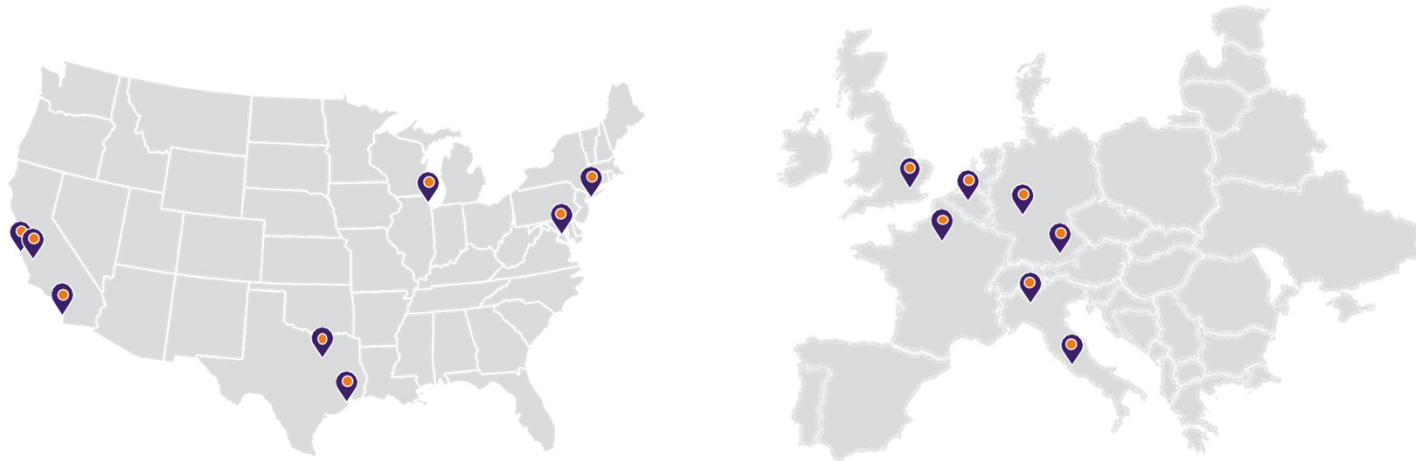
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- Mergers & Acquisitions
- Patent Litigation
- Private Equity
- Private Wealth Group
- Securities Litigation
- Special Situations Finance & Leverage Finance
- Trade Secrets & Employment Mobility
- Trials & Appeals

Panelists



LaRue L. Robinson
Partner
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Susan Rabinowitz
Partner
Corporate & Financial
Services



Donald Cole
Head of Legal, Americas
Tate & Lyle



John Mitchell
Counsel
Litigation

Overview

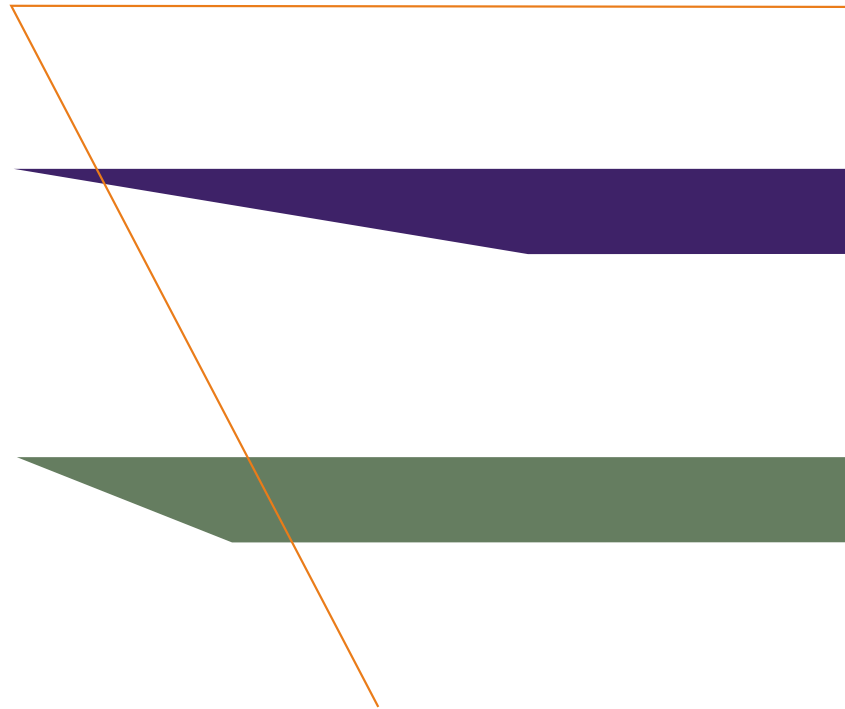
- Tariffs Background & Timeline
- Corporate Response to Tariffs
- Capital Markets
- DOJ Priorities
- SEC Priorities



Tariffs Background & Timeline

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Tariffs Background & Timeline

- On January 20, 2025, Trump announced 25% tariffs on imports from Mexico and Canada to begin February 1 – these were paused for 30 days on February 3
- On January 26, 2025, Trump announced 25% tariffs on Colombia, which would rise 50% in one week – these were quickly suspended
- On February 1, 2025, Trump imposed a 10% tariff on China to begin February 4
- On February 10, 2025, Trump imposed a 25% tariff on all foreign steel and aluminum
- On March 4, 2025, the Canada and Mexico 25% tariffs went into effect as well as an additional 10% tariff on China – tariffs on cars coming into the U.S. from Canada and Mexico were paused for one month on March 5 and many of the other tariffs were suspended on March 6



Tariffs Background & Timeline (Cont.)

- On March 24, 2025, Trump announced a 25% tariff on countries who purchase oil from Venezuela
- On March 26, 2025, Trump announced a 25% tariff on all cars and car parts shipped to the U.S.
- On April 2, 2025, a day Trump declared “Liberation Day,” sweeping universal 10% tariffs were announced on roughly 90 countries
- Those tariffs were supplemented by additional reciprocal tariffs which varied by nation, including China, which faced a new 84% tariff
- On April 9, 2025, Trump announced a 90-day pause on the additional reciprocal tariffs, bringing tariffs to a universal 10% tariff, but increased tariffs on China to 125%
- On April 10, 2025, the White House clarified that China’s 125% tariff was on top of the early 20% additions, so the total tariff on China is 145%



Tariffs Background & Timeline (Cont.)

- On April 12, 2025, U.S. Customs and Border Protection posted a notice exempting reciprocal tariffs on certain electronic devices, smartphones, laptops, hard drives, flat-panel monitors, and machines used to make semiconductors and some chips—the White House says these exemptions may be “short-lived”
- On April 14, 2025, the Trump administration took steps to investigate the import of semiconductors and pharmaceutical products under Section 232 of the Trade Expansion Act of 1962, which could result in additional tariffs
- On April 14, 2025, Trump stated he is considering temporary exemptions from his 25% tariffs on the auto industry
- On April 15, 2025, Trump issued an executive order to investigate critical minerals and their derivative products under Section 232 of the Trade Expansion Act of 1962, which could result in additional tariffs
- Litigation: Two lawsuits have been filed by small businesses challenging Trump's authority to impose tariffs under the International Emergency Economic Powers Act
 - Emily Ley Paper Inc. v. Donald J. Trump, et al., Case No. 3:25-cv-00464 (N.D. Fla.)
 - V.O.S. Selections, Inc., et al. v. Donald J. Trump, et al., Case No. 1:25-cv-00066 (C.I.T.)



Impact of Tariffs – Corporate Response

- Review strategic approach
- Stand-up coordinated teams that meet regularly
- Discuss with customers
- Lobbyists and political help
- Upskill teams
- Review trade compliance measures

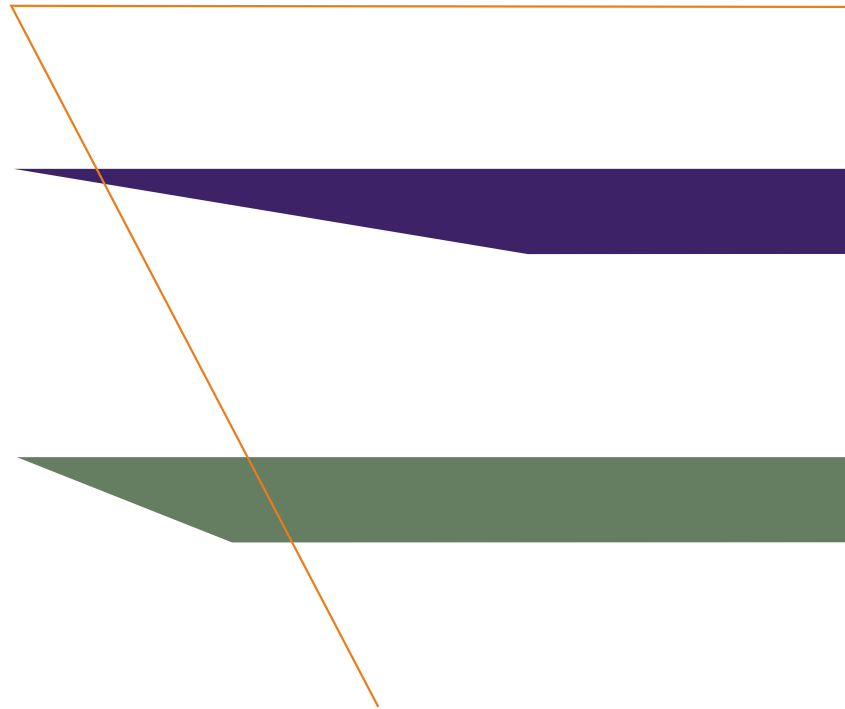




Capital Markets

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SEC's Shifting Regulatory Landscape

SEC Leadership and Priorities

The Trump administration's focus on deregulation and capital formation is expected to extend to the SEC

- **New SEC Chair:** Paul Atkins confirmed on April 9, 2025
 - Lighter-touch regulation, with deregulatory agenda aimed at economic growth
 - Reduced compliance burdens
 - Narrower interpretative authority
- **Regulatory Priorities:**
 - Promote capital formation
 - Streamline or eliminate perceived “burdensome” disclosure rules, including de-emphasis of ESG and climate disclosures
 - Support “innovation,” including easing the regulation of digital assets/cryptocurrencies and SPACs
 - Potential deregulation of financial services
 - Shift regulatory focus from sophisticated investor products (continuing focus on retail investor protection and enforcement clarity)

Senate Banking Committee Chair
Tim Scott

“Paul Atkins brings a wealth of experience and dedication to safeguarding our capital markets.

His tenure will mark a pivotal moment to roll back harmful Biden-era policies, promote capital formation, and enhance opportunities for retail investors.

Chairman Atkins will also provide regulatory clarity for digital assets, allowing American innovation to flourish, and ensuring we remain competitive on the global stage.”

Regulatory and Enforcement Shifts



Leadership Changes

New SEC Chair Paul Atkins supports deregulation and a crypto-friendly approach.

Enforcement Focus Shift

The SEC is prioritizing traditional fraud cases over regulation by enforcement.

Regulatory Rollbacks

The SEC has paused all pending rulemakings initiated during the Biden administration.

Halt of pending rules on climate disclosures marks a shift in regulatory focus under the new administration.

Suspension of ESG requirements aims to reduce compliance burdens for companies.

Market Impact

Deregulation is expected to revive IPO and M&A activity in the energy and tech sectors.

SEC Restructuring



Key Official Exits

Key officials from the Biden administration, including the Chief Accountant and leaders of the Enforcement Division, have left the SEC.

This shift indicates a significant change in the agency's leadership and direction.



Geographic Consolidation

The SEC is consolidating its regional offices, including the closure of locations like Los Angeles and Philadelphia.

Enforcement staff now report to three regional deputy directors: West, Northeast and Southeast.

This consolidation aims to streamline operations but risks diluting localized expertise, particularly in major cities. This may reduce the SEC's responsiveness to regional issues.



Enforcement Reorganization

Enforcement is being reorganized under three regional deputy directors, replacing the previous structure of 10 regional offices.

This change is intended to reduce bureaucratic layers but may centralize decision-making, impacting responsiveness.



Legal and Regulatory Outlook

Shifting Priorities – Areas to Watch

- SEC Exempt Offering Reforms
- IPO and Public Company Reporting Rules
- Proxy Advisory and Governance Reforms
- Climate and ESG Roll Back
- Digital Asset Securities Regulation
- Cross-Border Capital Flows and Sanctions
- FSOC Systemic Risk Designations

Capital Formation Initiatives

Potential Rulemaking and Guidance

- Easing Access to Public Markets and Disclosure Requirements:
 - Further expansion of Emerging Growth Company benefits (e.g., status, confidential filings, scaled disclosures)
 - Reduced IPO disclosure burdens
 - Broader confidential submissions
 - Softer SOX internal control mandates (repeal or roll back of SOX Section 404(b) requirements for smaller public companies)
- Private Capital Formation Boost:
 - Expanded Reg D and Reg A+ pathways (e.g., higher offering caps)
 - More inclusive “accredited investor” definition
 - Allow Rule 506 offerings under Regulation D to self-certify accredited investor status
 - Greater flexibility in testing-the-waters and communications pre-offering
- Enhanced Liquidity for Private Securities:
 - Potential shorter Rule 144 holding periods or reduced restrictions on securities resales to promote secondary liquidity
 - Reduced disclosure requirements for private placements

Implications

- Easier (and less costly) access to public and private markets
- More viable alternatives to public capital for early-stage and mid-market companies
- Faster timelines for going public
- Leaner financial reporting obligations

Evolving Disclosure and Governance Requirements

Roll back of ESG, Climate and Cybersecurity

- SEC likely to de-prioritize enforcing ESG-related disclosures, maintaining a focus on ensuring that ESG disclosures remain voluntary and free from excessive regulatory mandates and reinforcing a more business-friendly approach
- Climate disclosure rule defense ceased (March 27, 2025):
 - Conflicts with certain state laws (e.g., CA) and international frameworks
 - Effectively unenforceable at the Federal level
 - Although the SEC is no longer defending the rules, 20 democratic attorney generals have intervened in the lawsuit to defend them
 - Investor and stakeholder pressure for ESG reporting persists
- Key Implications:
 - Reassess disclosure controls & frameworks
 - Monitor regulatory agendas and comment periods
 - Balance compliance pullbacks with stakeholder expectations
 - Watch for litigation exposure from selective disclosure
 - Think ahead and remain positioned for potential increased compliance burdens in future administrations

Evolving Disclosure and Governance Requirements

Periodic Disclosure and Governance Policies

- Expectation is that few, if any, new periodic disclosure requirements will be mandated by the SEC under the second Trump administration and that many Biden initiatives will be rolled back or rescinded
- Human Capital Management:
 - Proposed rule to enhance disclosures regarding human capital management not expected to be pursued by the SEC
- Cybersecurity:
 - Potential roll back of cybersecurity disclosure rule
- Corporate Board Diversity:
 - Nasdaq Board Diversity Rule and proposed SEC rule to enhance proxy disclosures regarding board diversity unlikely to be pursued by the SEC
- Rule 14a-8 Shareholder Proposals:
 - The SEC will not pursue a proposed rule to narrow substantive bases for excluding shareholder proposals. Additionally, the SEC in Feb. 2025 issued new guidance providing companies more flexibility to exclude shareholder proposals (particularly those relating to social or ethical issues) under the economic relevance and ordinary business exceptions of Rule 14a-8, rescinding prior Gensler-era guidance

Sector-Specific Impacts



Tech and Crypto Gains

The tech and crypto sectors are expected to thrive due to lighter regulatory oversight.

This environment may foster innovation and attract more investment in digital assets.



Financial Flexibility

Financial services may see reduced compliance costs from deregulation.

However, this could increase competition from private capital, affecting traditional firms.



Retail Investor Focus

Despite the trend toward deregulation, the SEC is likely to continue emphasizing the protection of retail investors.

Retail investors, however, may face increased risks as protections focus primarily on overt fraud.



Digital Assets and Innovation



Digital Asset Flexibility

The SEC's new leadership is adopting a more permissive approach to digital assets.

This shift is expected to reduce litigation against crypto firms.



Market Innovation Boost

A clearer regulatory framework for digital assets is being established.

- Crypto task force (Jan. 2025) dedicated to developing a comprehensive and clear regulatory framework for crypto assets.
- Cyber and Emerging Technologies Unit (Feb. 2025) to combat cyber-related misconduct and protect retail investors (replaced the SEC Enforcement Division's Crypto Asset and Cyber Unit).
- Executive Order on Financial Technology.
- SAB 121 Repeal.

This framework is likely to directly encourage innovation in the crypto market.



Regulatory Easing

Deregulation efforts are simplifying compliance for crypto firms.

These changes are expected to increase participation in the digital asset space.



Banks, Financial Services and FinTech

- New leadership at the financial regulatory agencies is likely to reverse some Biden-era rules and policy statements, with President Trump's picks expected to implement industry-friendly changes in several areas, including supervision, capital and liquidity requirements, and digital assets
- Dodd-Frank Roll Back 2.0?: Possible efforts to further scale back banking regulations could affect capital markets, particularly debt issuance and leveraged finance
- Capital and liquidity requirements
 - Under the Trump administration, it is likely that proposals for heightened capital requirements will be abandoned or revised substantially
- SAB 121 Repeal:
 - Removes barriers for banks to custody crypto assets
- M&A environment expected to increase with lighter regulation

Navigating the Evolving Regulatory Environment

Practical Advice

- Remain Proactive on **Corporate Governance** Flexibility

Shift: A deregulatory posture and roll back of prescriptive governance rules in favor of board discretion and reduced oversight

- Anticipate relaxed rules around shareholder proposals, proxy advisors, and ESG-related disclosures
- Educate boards on the shifting balance between regulatory compliance and investor expectations (particularly around ESG and DEI) and prepare messaging if challenged on these fronts
- Maintain robust internal governance frameworks, even if external pressure lessens—deregulation ≠ de-risking investor, proxy advisor, reputational and litigation risks persist

- Monitor **SEC Disclosure** Roll Backs and Litigation Posture

Shift: The SEC under new leadership may reverse or halt enforcement of rules like climate disclosure and 13D reforms

- Monitor real-time litigation outcomes (e.g., climate rule legal challenges) and watch for rule withdrawals or nonenforcement signals from the SEC
- Avoid whipsawing your disclosure strategy—stick to principles-based, investor-focused disclosures even as mandates shift
- Preserve optional ESG or climate disclosures that are already integrated, but adapt messaging to align with business risk language rather than compliance checklists

- Prepare for Acceleration of **Capital Formation** Initiatives

Shift: Renewed emphasis on making it easier for companies to raise capital, especially private placements and exempt offerings

- Explore use of exemptions like Reg D, Reg A+, and Rule 144A for capital raising with less regulatory friction
- Track any roll back or reinterpretation of rules around the accredited investor definition or general solicitation
- Position your company to capitalize on a friendlier SEC for new issuances—but ensure that diligence, disclosure and risk assessment processes remain rigorous

- Reinforce Internal **Compliance** without Regulatory Pressure

- Take advantage of flexibility but avoid complacency—maintain robust compliance programs even in a deregulated environment
- Use this time to strengthen internal controls, upgrade training, and refine reporting procedures
- Focus on reputational and investor-driven standards, not just regulatory minimums

- **Engage Advisors** with Relevant Experience

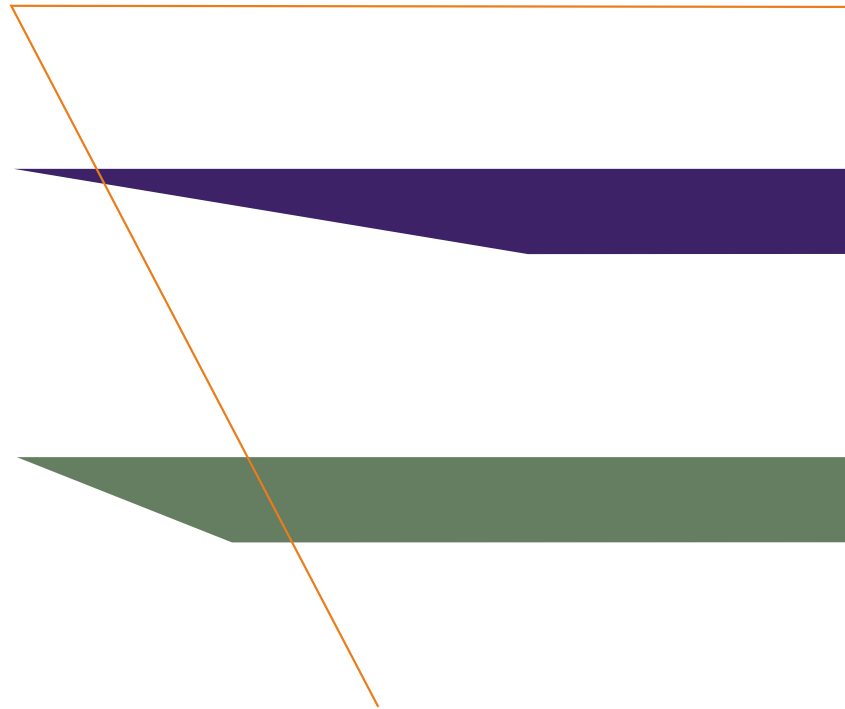
- Consult with legal experts to monitor developments, navigate the changing landscape and ensure adherence to applicable laws and regulations



DOJ Priorities

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DOJ Priorities

- Immigration Enforcement
- Human Trafficking and Smuggling
- Transnational Organized Crime, Cartels and Gangs
- Protecting Law Enforcement from Attack or Unfair Criticism
- Shifting Resources in the National Security Division
- Shifting ATF Resources

Bondi Memo, General Policy Regarding Charging, Plea Negotiations, and Sentencing, Feb. 5, 2025



Immigration Enforcement Impact on Corporations and Employers

- Impact on U.S. hiring
- Impact on employee travel
- H-1B visas
- ICE and/or CBP access to nonpublic workspaces
- Judicial warrant v. administrative warrant
- Create a plan



Organized Crime Focus Impact on Corporations and Employers

- Companies that operate or have facilities in Latin America and Mexico may face additional scrutiny
- Broader focus on terrorism outside of Latin America as well, including Iran and China
- Consider increasing due diligence and compliance measures



“Shifting Resources” from White Collar Crime

- **Foreign Agents Registration Act (FARA)**
 - Requires persons representing foreign interests to register with DOJ
- “Free resources to address more pressing priorities.”
- “End risks of further weaponization and abuses of prosecutorial discretion.”
- **Still Fair Game:** “[I]nstances of alleged conduct similar to more traditional espionage by foreign government actors.”
- **National Security Division Corporate Enforcement Unit Disbanded.**



“Shifting Resources” from White Collar Crime (Cont.)

- February 10 Executive Order pausing enforcement of FCPA
- What does this Executive Order Require:
 - Cease all FCPA investigations and enforcement actions unless the Attorney General makes an individual exception
 - Review by the Attorney General of all FCPA investigations and enforcement actions
 - Issue updated guidance or policies on FCPA
- Why?
- To pause “overexpansive and unpredictable FCPA Enforcement...for routine business practices in other nations.”



“Shifting Resources” from White Collar Crime Cont.)

- **While New FCPA Investigations Will Be Rare, One Exception:**
 - FCPA Investigations involving Human Trafficking or Drug Cartels
- **Ongoing Investigations:**
 - Opportunity to Seek Declination
- **Resolved Cases:**
 - Opportunity to Seek Termination of Monitorship (e.g., Glencore monitorship ended 15 months early)



“Shifting Resources” from White Collar Crime (Cont.)

- How has the Executive Order Been Applied by the DOJ to Pending Cases?
 - Cognizant Technology - Indictment Dismissed
 - *U.S. v. Zaglin* – Proceeding to Trial
 - *U.S. v. Hobson* – Proceeding to Trial
 - Smartmatic Corp – Proceeding to Trial



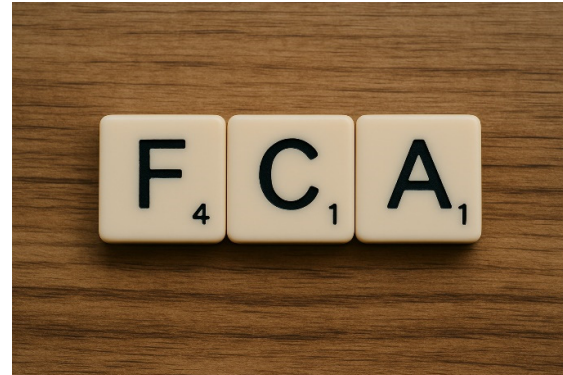
“Shifting Resources” from White Collar Crime (Cont.)

- **Takeaways: Fewer DOJ FCPA investigations and prosecutions, but:**
- **Five-year statute of limitations for FCPA**
- **Other federal criminal charges covering same conduct**
 - e.g., bribery, wire fraud, money laundering
- **State or International investigations**
 - e.g., California AG; International Anti-Corruption Prosecutorial Task Force



Proactive Use of False Claims Act (FCA)

- FCA not only imposes liability for false claims for payment to the government, but also when a company or person “knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government”
- The DOJ may use this statute to investigate and prosecute:
 - Tariff noncompliance
 - Reporting requirements for federal grants and contracts
 - DEI policies
 - Anti-semitic policies
 - Cybersecurity requirements
- FCA violators are liable for treble damages



Antitrust

- DOJ Anticompetitive Regulations Task Force: The Task Force will broadly review laws and regulations that “undermine free market competition and harm consumers, workers, and businesses.”
- The DOJ Antitrust Division is initiating a public inquiry to identify unnecessary laws and regulations, particularly in the following industries:
 - Housing
 - Transportation
 - Food and Agriculture
 - Healthcare
 - Energy
- The public has until May 26 to submit comments at www.regulations.gov
- Aggressive regulatory stance towards Big Tech (e.g., landmark trial to break up Meta starts next week)

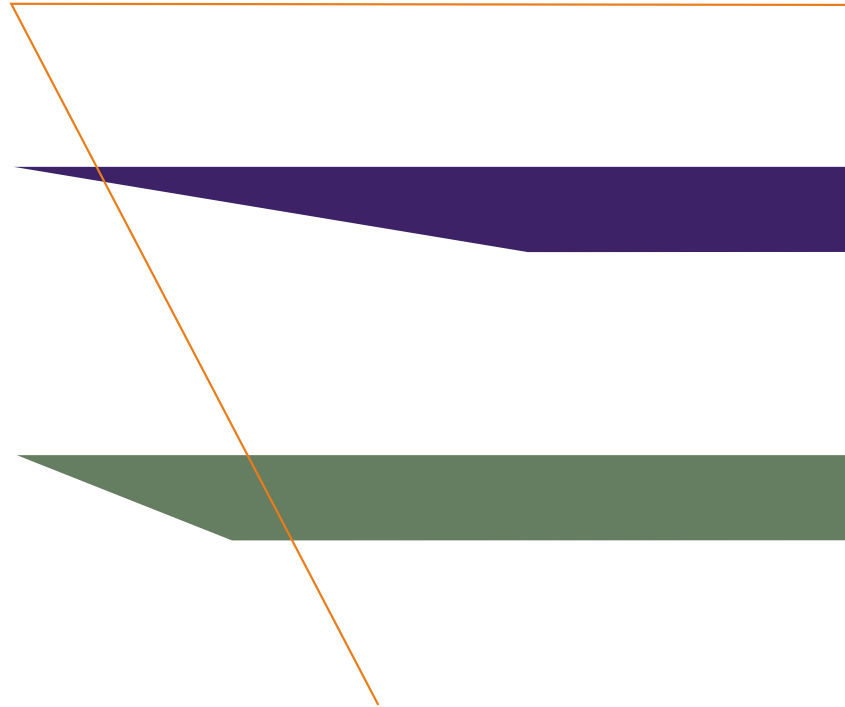




SEC Priorities

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Anticipated SEC Priorities

- Easing regulatory burdens, including on capital formation;
- Simplifying and reducing disclosures;
- Establishing a clear regulatory framework for digital assets (i.e., Crypto); and
- Focusing on investor impact



Future of the SEC

- Reorganized Regional Offices and Reduced SEC Staff
- Potentially eliminating FINRA and PCAOB
- Potentially eliminating the Consolidated Audit Trail



Future of the SEC – What to Expect from SEC Enforcement

- Investigations of fraud involving financial harm to victims
- Fewer actions enforcing rules designed to protect investors if there is no financial harm to a victim:
 - “Off-Channel Communication” cases?
 - Follow DOJ’s FCPA “Pause”?
 - Future of Crypto?
- But unlikely the SEC will revisit pre-inauguration settlements
 - E.g., Divided Commission voted against revisiting Off-Channel Communications settlements with 16 financial firms



Future of the SEC

- Fewer SEC resources and narrower enforcement focus, but:
- New state laws
- E.g., Illinois Digital Assets and Consumer Protection Act
- State Attorneys General
- E.g., New York Attorney General \$200 Million Settlement with Galaxy Digital





Questions?

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