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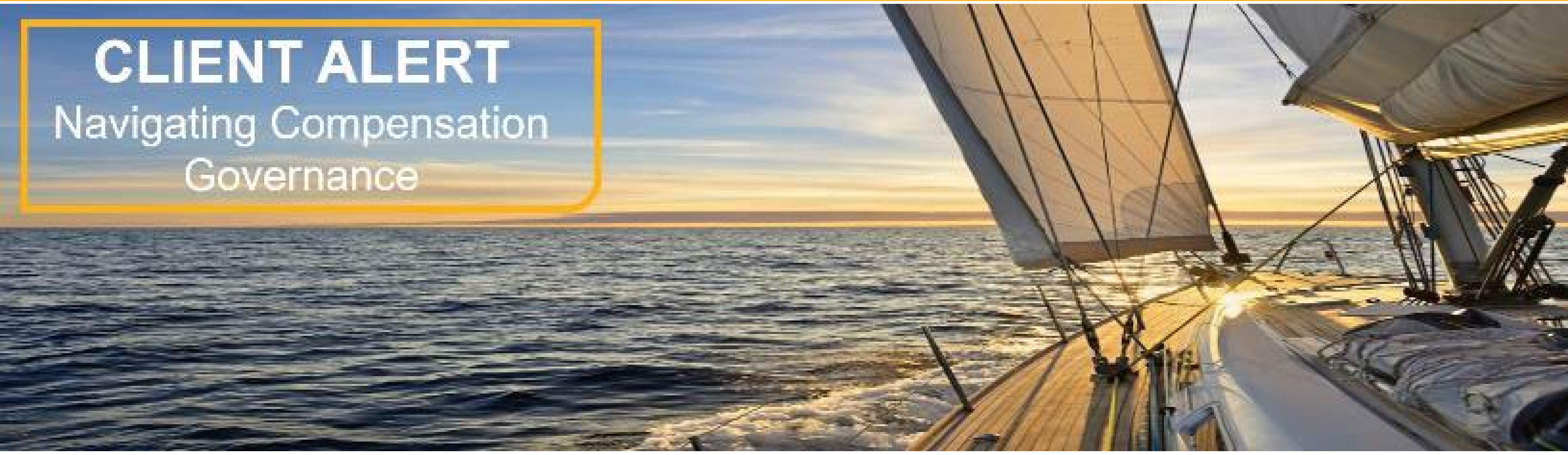

White House Asserts Authority Over Federal Regulatory Agencies Through Recent Executive Order

Executive Order gives President final word on rules issued by federal regulatory agencies.

Agency activities will be subject to review to ensure consistency with President's policies and priorities.

Agency chairs will be required to coordinate policy with White House.

Background on Presidential Power over Federal Agencies

Article II of the U.S. Constitution establishes the Executive Branch of the federal government and expressly vests the power of the Executive Branch in the President of the United States. As a general matter, federal regulatory agencies are part of the Executive Branch. Typically, Presidents have chosen to exercise limited power over these agencies, principally through the appointment of agency heads and members. In addition, Presidents and their staff help to form agency agendas and priorities through informal communications with agency heads and staff members. Historically, Presidents have opted not to directly oversee the functions of these agencies or to review agency regulatory actions.

President Trump's Executive Order upends historical practice by placing federal regulatory agencies squarely under the control of the White House, which President Trump believes falls within his Constitutional powers.

President Trump's Executive Order on Federal Regulatory Agencies

On February 18, 2025, President Trump signed an Executive Order which outlines the working relationship between the President and federal regulatory agencies. The key elements of the Executive Order are described below:

- Review of significant regulatory actions. Each agency must submit for review all proposed and final "significant" regulatory actions to the newly created Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President before publication in the Federal Register. The Executive Order does not define the term "significant." We anticipate OIRA will provide guidance to agencies as to when regulatory actions meet the significant threshold.

- Implementation of Performance Standards and Management Objectives. The Director of the Office of Management and Budget ("OMB') is tasked with establishing performance standards and management objectives for agency heads, and report periodically to the President on their performance and efficiency in attaining such standards and objectives.

- Review of Independent Regulatory Agencies' Obligations. On an ongoing basis, the OMB Director is required to (i) review each agency's obligations for consistency with the President's policies and priorities; and (ii) consult with agency chairs and adjust such agencies' obligations as necessary and appropriate, to advance the President's policies and priorities.
- Coordination of Agencies' Policy with White House. The head/chair of each agency must undertake the following: (i) regularly consult with and coordinate policies and priorities with the directors of OMB, the White House Domestic Policy Council, and the White House National Economic Council, (ii) establish a position of White House Liaison in their respective agencies, and (iii) submit agency strategic plans to the Director of OMB for clearance prior to finalization.

The Executive Order covers all federal regulatory agencies, including the Federal Election Commission, but does not apply to the Federal Reserve System or Federal Open Market Committee in its conduct of monetary policy. However, the Executive Order does apply to the Federal Reserve System in connection with its conduct and authorities directly related to its supervision and regulation of financial institutions.

Constitutional Theory Underlying Executive Order

President Trump's Executive Order represents the application of the "unitary executive" theory. The unitary executive theory is a legal and constitutional theory that posits the U.S. president has broad and exclusive control over the executive branch, with limited interference from Congress or the judiciary. It is based on the Article II Vesting Clause of the U.S. Constitution, which states that "The executive Power shall be vested in a President of the United States of America."

The Executive Order implicitly points to the unitary executive theory in its preamble which notes the following:

> "The Constitution vests all executive power in the President and charges him with faithfully executing the laws. Since it would be impossible for the President to single-handedly perform all the executive business of the Federal Government, the Constitution also provides for subordinate officers to assist the President in his executive duties. In the exercise of their often-considerable authority, these executive branch officials remain subject to the President's ongoing supervision and control."

The Executive Order further notes that "to improve the administration of the executive branch and to increase regulatory officials' accountability to the American people, it shall be the policy of the executive branch to ensure Presidential supervision and control of the entire executive branch."

The lawful scope of Presidential oversight of regulatory agencies has yet to be tested in the courts.

Implication of Executive Order on Executive Compensation and Governance

The Executive Order indirectly implicates executive compensation and related governance matters through its application to the principal federal agencies responsible for promulgating and enforcing rules on these matters: Securities and Exchange Commission, Internal Revenue Service and Federal Trade Commission. These agencies will be required to align their policies, priorities and enforcement activities to be consistent with President's regulatory philosophy. This includes complying with the President's directive to identify 10 rules for elimination for every newly issued rule or regulation and, more generally, identifying rules for repeal. The President's regulatory philosophy will be enforced by the OMB director and the new Office of Information and Regulatory Affairs which will likely sharply curtail (if not prevent) any of these agencies from taking actions inconsistent with the President's philosophy.

At a minimum, the net effect of presidential oversight of these agencies may cause a significant reduction in the issuance of new rules and regulations. The SEC is unlikely to issue any new proxy rules covering the disclosure of executive compensation and corporate governance matters. Conversely, the SEC will be under pressure to eliminate what the administration perceives to be unnecessary or burdensome disclosure rules. However, neither the Trump administration nor the Department of Governance Efficiency have yet to identify disclosure rules for potential repeal.

The Federal Trade Commission focus on non-competes is likely to be curtailed or cease under President Trump's oversight. Given the new administration's general business friendly philosophy, it would seem likely that the OMB director will instruct the DOL not to appeal a federal district court's nationwide order blocking the DOL's general prohibition on non-compete arrangements. In addition, the DOL may be urged to repeal, in whole or in part, employer reporting requirements on employee demographics.

Lastly, presidential oversight of the Internal Revenue Service would not appear likely to impact tax rules related to executive pay, such as Internal Revenue Code sections 162(m)(related to the deductibility of executive compensation), 280g/4999 (related to the taxation of golden parachute payments) and 409A (related to taxation of deferred compensation). While 162(m) was significantly modified under the prior Trump administration, the other two Code sections remained intact. At this time, we expect no changes to these Code sections under the administration's anticipated tax bill.

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The ***Client Alert*** is prepared by Meridian Compensation Partners' Governance and Regulatory Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-347-2524.