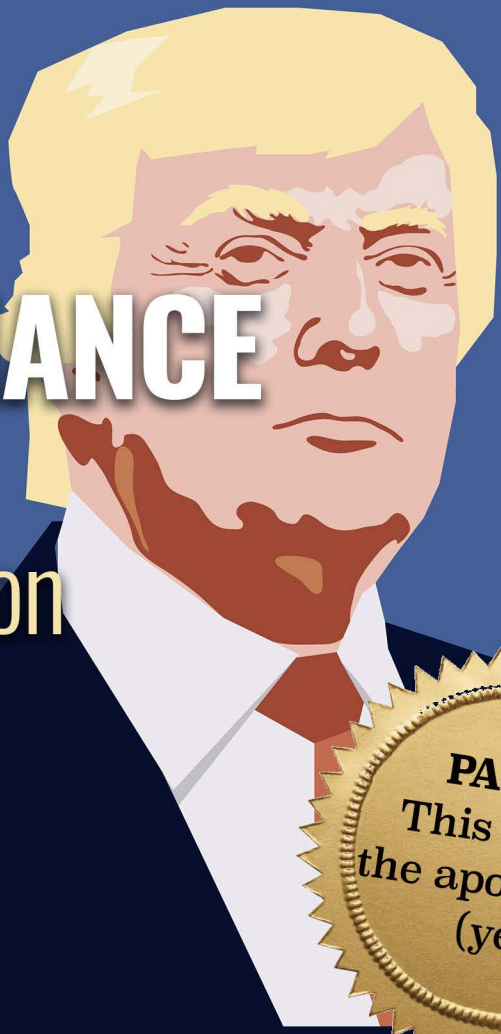
Corporate Compliance Insights

TRUMP AND COMPLIANCE

This Conversation is Just Getting Started...



PART 1
This is not the apocalypse (yet)

Analysis, Predictions and the Occasional Rant From the *Everything Compliance* Podcast

Tom Fox

Michael Volkov Jay Rosen Matt Kelly Johnathan Armstrong

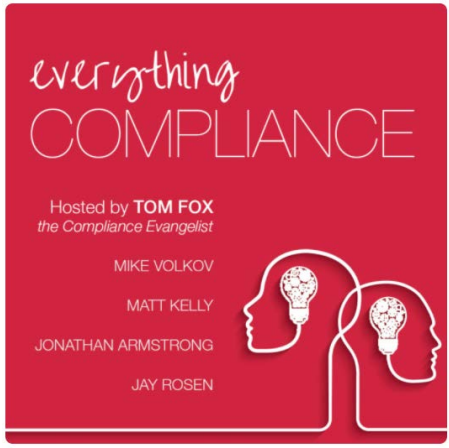
Trump and Compliance

This Conversation is Just Getting Started

Voices from the
Everything Compliance Podcast
Hosted by: **Tom Fox**

featuring

Michael Volkov | Matt Kelly | Jay Rosen | Jonathan Armstrong



Published By Corporate Compliance Insights

Corporate Compliance Insights educates and encourages informed interaction within the corporate compliance community by providing discussion and analysis of corporate compliance, risk assessment, ethics, audit, and corporate governance topics. In adherance to strict journalistic standards, CCI publishes the works of GRC experts and thought leaders from around the world. CCI's founder and publisher is Maurice Gilbert, CEO and managing partner of Conselium, a compliance-focused executive search firm.

Corporate Compliance Insights is the flagship publication of Conselium Executive Search. Conselium is the only global executive search firm that focuses exclusively on compliance profesionals.

Trump Illustration: Copyright: Arthur Balitskiy/Shutterstock

Cover design: Words & Pictures

Introduction

By Maurice Gilbert

CCI Publisher and Managing Director of Conselium Executive Search

The election of Donald Trump has caused us all to wonder -- and worry -- about what the future may hold for compliance professionals. To help answer these questions, five top commentators on the FCPA, compliance and privacy issues have crafted essays highlighting their initial reactions and predicting the election's impact on FCPA enforcement, the compliance profession and compliance practice generally.

How did this conversation begin?

Tom Fox's "Everything Compliance" Podcast was the springboard for this continuing dialog. When we all woke up to a new world on November 9, 2016, Tom responded by asking leading compliance commentators what they think FCPA enforcement and compliance might look like under the new administration. Tom dedicated an entire podcast episode to these issues and wisely recognized the need to compile these experts' early reactions and to share them -- in an on-going way -- with the greater compliance community.

As a leading voice in compliance, Tom will continue this conversation as the story takes shape. We look forward to sharing it with you.

The Contributors:

Jay Rosen ("Mr. Translations") is vice president of legal and corporate language solutions at United Language Group. He helps clients develop efficient and cost-effective solutions for legal language for global investigations and for governance, risk management and compliance matters. Rosen is Fox's podcast partner for his weekly Friday podcast "This Week in FCPA." Rosen also curates weekly top FCPA and ethics and compliance stories for "Jay Rosen's Weekend Read," available on LinkedIn Pulse. He can be reached at jay.rosen@ulgroup.com.

Michael Volkov is a top FCPA commentator and practitioners and is CEO and owner of The Volkov Law Group, LLC. Volkov has more than 30 years of experience in practicing law, is a former federal prosecutor and veteran white collar defense attorney. He has expertise in areas of compliance, internal investigations and enforcement matters. Volkov maintains the popular FCPA blog Corruption, Crime & Compliance and is a regular speaker at events around the globe and is frequently cited in the media for his knowledge of criminal issues, enforcement matters, compliance and corporate governance. Volkov can be reached at mvolkov@volkovlawgroup.com.

Matt Kelly is founder and CEO of Radical Compliance and is the former editor of Compliance Week. Matt is an independent compliance consultant who studies corporate compliance, governance and risk management issues. On his blog, RadicalCompliance.com, he writes about the intersection of business issues, compliance, governance and risk topics. Kelly was named "Rising Star of Corporate Governance" by Millstein Center for Corporate Governance in the inaugural class of 2008 and named to Ethisphere's "Most Influential in Business Ethics" list in 2011 and 2013. Kelly can be reached at mkelly@radicalcompliance.com. Kelly and Fox also swap stories on the Fox's Compliance into the Weeds podcast, where we weekly dive deep into the weeds of a compliance-themed topic.

Jonathan Armstrong Rounding out the contributors is our U.K. colleague, who is an experienced lawyer with Cordery Compliance Limited in London. His practice concentrates on compliance and technology issues, including advising multinational corporations on matters involving risk, compliance and technology across Europe. He has handled legal matters in more than 60 countries involving allegations relating to bribery, whistleblower complaints, corporate governance, ethics code implementation, reputation, internal investigations and data privacy matters. Armstrong can be reached at jonathan.armstrong@corderycompliance.com.

Tom Fox ("The Compliance Evangelist") is the compliance ambassador for the Red Flag Group and is a leading voices in the compliance profession. He hosts the "Everything Compliance" podcast along with five other podcasts concerning aspects of compliance and business leadership. He is the editor and founder of the award winning FCPA Compliance and Ethics Blog and has authored numerous books on the FCPA, the compliance profession and leadership. His blogging, podcast, books and white papers are available at www.fcpacomplinacereport.com.

Chapter I
The FCPA Under Trump
By Tom Fox

A. FCPA Enforcement Going Forward

Donald Trump has gone on the record as saying the Foreign Corrupt Practices Act (FCPA) is a "horrible law and it should be changed" and that it puts U.S. businesses at a "huge disadvantage." This statement was made in the context of allegations of facilitation payments by Wal-Mart in Mexico that reached as high $24,000. Yet, even President-Elect Trump realized the invidiousness of bribery and corruption in the international business context as, in the same interview, as he said that other countries should clean up the corruption that occurs in their countries. What does all of this and a Trump administration mean for FCPA enforcement and, more importantly, FCPA compliance going forward?

I think it unlikely that a Trump administration will change much in the way of FCPA enforcement for several reasons: some political, some practical, some legal and one optical.

On the political side, the FCPA is a key component in the international fight against terrorism. The direct link between corruption and terrorism is not only well-founded but has (unfortunately) been demonstrated again and again. Even low level corruption in the form of facilitation payments, which are exempted out of the FCPA, have been seen to directly lead to terrorism in the form of porous borders. While I doubt that businessman Trump understood the link between terrorism and corruption, I am certain that President Trump will either learn about this link very quickly or will be told multiple times by his security advisors. With his emphasis on U.S. security from terrorism, the Trump Administration will not want to be seen as softening the war on terrorism by even making things easier for the bad guys.

Peter Henning, writing in the New York Times (NYT) Dealbook column in a piece titled "How Trump's Presidency Will Change the Justice Dept. and SEC," wrote, "The roots of the government's crackdown on overseas

corruption can be traced to the administration of George W. Bush and it was continued aggressively by President Obama. Many of the cases involve foreign companies that have paid millions of dollars in fines, and they are a way to show the public that global enterprises are being overseen to ensure compliance with American law." Currently seven of the top 10 places on the Top 10 FCPA enforcement actions of all time are held by foreign domiciled entities. It is certainly in the U.S. interest to prosecute companies that play unfairly and cheat, through bribery and corruption, against American companies. With Trump's protections sentiments translated into policies, continued vigorous enforcement of the FCPA is right in line with such a trade policy. Are we going to address Trump's promise to reduce regulations?

The practical reasons that FCPA enforcement will not significantly change under a Trump administration relate to the unique prosecution and enforcement model that was developed and has now been memorialized in the Department of Justice's (DOJ) Yates Memo and the FCPA Pilot Program. Under the Yates Memo for companies to receive any cooperation credit they must investigate and turn over information on potential culpable individuals. Under the FCPA Pilot Program, companies can receive up to a 50 percent discount off the bottom end of the range of penalties under the U.S. Sentencing Guidelines. However, in practice since the announcement of the Pilot Program in April several companies have received full declinations to prosecute for robust internal investigations, self-disclosure and effective remediation.

The bottom line is that the current FCPA enforcement model leads to companies doing the hard work of leading the investigations into FCPA violations and handing those investigations over to the DOJ. This self-sustaining model benefits both companies and the government and no one administration will likely overturn an enforcement model that is so efficient. The Yates Memo directs government prosecutors to focus on individuals so they will do so going forward. Moreover, companies no more want criminals working in their midst than the government wants companies to violate the law. This current model of FCPA investigation and enforcement then benefits both a business goal and legal goal. In other words, it is a business response to a legal problem.

Equally important is the self-funding mechanism to the DOJ's FCPA investigation convention. As companies bear the costs of these FCPA investigations, the government does not have to incur these expenditures.

When the inevitable budget cuts come to the DOJ, one area that will not be impacted is FCPA enforcement. Henning noted, "The benefit of how the foreign bribery cases are pursued is that the cost is borne by the private sector. Although prosecutors proclaim they do not necessarily accept the findings of the law firms hired to ferret out misconduct inside a company, there have been few cases in which the government committed significant resources to investigate on its own." Even if the DOJ budget and resources are reduced, the financing of FCPA investigations is borne by companies and this will continue. While the Fraud Unit, FCPA Section could have its staff cut, that would only slow down resolutions from their current pace. No one wants that to occur, certainly not businesses and not even President Trump.

Furthermore, there's the legal reason. The FCPA will be celebrating its 40th anniversary in the same year President-Elect Trump takes his oath of office. There is no serious practitioner or commentator who has called for the repeal of the FCPA. Those who have called for its lessening have been debunked as those who simply want to lessen the effectiveness of the world's leading anti-corruption law. In short, there is no clarion call to repeal the FCPA.

President-Elect Trump cannot overturn the law via Presidential fiat, the law can only be overturned by full Congressional hearing and legislation. To do so would make clear the true intention of those seeking to repeal the FCPA; they want to allow U.S. companies to engage in bribery and corruption. The problem with this argument is that U.S. companies obtaining business through illegal actions is not in the interest of the U.S. or in the interests of U.S. business engaged in commerce outside the U.S. and even a GOP Congress recognizes this clear fact.

Finally, there's optics. As Peter Henning noted, "It is unlikely that Mr. Trump would want to be seen as going soft on corruptions after some of his rhetoric during the campaign, so the Foreign Corrupt Practices Act is likely to remain a featured player in white-collar enforcement."

B. How FCPA Compliance Profits American Businesses

Next I to turn to the effectiveness of the FCPA in assisting American business interests outside the United States and making America great when companies are in compliance with the law. I also want to show how FCPA compliance puts forward a much wider variety of U.S. interests to make

America great again and again. I begin with a quote from the memoirs of former Secretary of Defense Robert Gates, entitled "Duty: Memoirs of a Secretary at War":

"In a private meeting, the king [King Abdullah of Saudi Arabia] committed to a $60 billion weapons deal including the purchase of eighty-four F-15's, the upgrade of seventy-15s already in the Saudi air force, twenty-four Apache helicopters, and seventy-two Blackhawk helicopters. His ministers and generals had pressed him hard to buy either Russian or French fighters, but I think he suspected that was because some of the money would end up in their pockets. He wanted all the Saudi money to go toward military equipment, not into Swiss bank accounts, and thus he wanted to buy from us. The king explicitly told me saw the huge purchase as an investment in a long-term strategic relationship with the United States, linking our militaries for decades to come."

How many ways that the FCPA makes America great are contained in the above quotation? I can identify at least 5: (1) U.S. security interests are made great; (2) U.S. foreign policy interests are made great; (3) U.S. military interests are made great; (4) U.S. economic interests are made great; and (5) the American goal of the rule of law in international business transactions is made great; all by compliance with the FCPA.

Candidate Trump seemed to suggest that U.S. security makes America great, which included the fight against terrorism. This fight against terrorism has many different tools and the FCPA as one of them. But this citation from former Secretary of Defense Gates clearly shows several other ways America is made great by compliance with the FCPA. If it had not been for the effective FCPA-based compliance programs of the U.S. aerospace and armament industry, the Saudi Arabian ministers may have been able to advise the King to buy something other than American, which is clearly antithetical to American business interests. But because bribing such ministers would violate U.S. law and put the U.S. companies under potential legal liability, the King had confidence that the U.S. companies were not bribing his ministers to get the Saudi business. Simply put, FCPA compliance means that governments that purchase goods and services from America will get the value of those goods and services and not some version cheapened because some of the sales price was used to pay bribes to government officials.

Why? Because paying a bribe to a foreign governmental official creates an

instant conflict of interest (COI) between the person authorizing the purchase by putting his own self-interest in giving the business to a company that has bribed him for the business. As Jeff Kaplan would say, there is a clear conflict of interest by the bribe receiver because they are being paid to make a decision to award the business to a company that lines their pockets. Or, in the case of the Saudi ministers that the Saudi King referred to, their collective Swiss bank accounts.

The FCPA is a supply side focused law. It criminalizes the conduct of the bribe-giver and not the bribe-receiver. But because of this fact it means that U.S. companies that comply with the law can help foster the U.S. interests that I listed above and perhaps others that I have not identified. So just as I believe that FCPA compliance helps in the fight against terrorism, I also believe that FCPA compliance helps to foster U.S. foreign policy, U.S. economic interests and U.S. legal interests.

I see this most clearly in Houston, Texas, which is generally recognized as the epi-center of FCPA enforcement. There have been more FCPA enforcement actions against companies based in Houston than in any other single city in the world. This is largely because Houston is the self-proclaimed energy capital of the world but this profusion of FCPA enforcement has also led to companies in Houston having some of the most mature compliance programs and it has also led to quite a bit of FCPA knowledge throughout businesses in the city. Nonetheless, the key is the business response to the issue has been the creation, implementation and then the doing of compliance. Buy American and the FCPA helps ensure that you get the full value of what you paid for.

FCPA compliance can be expressed through the formulation articulated by Paul McNulty and Stephen Martin, which they call the "Five Elements of an Effective Compliance Program", which are leadership, performing a risk assessment, instituting standards and controls, then providing training and communication on those standards and controls and, finally, oversight of your compliance program. While both McNulty and Martin have written and spoken extensively on these elements to flesh them out, these basic concepts are usually quickly and easily understood. Further, and perhaps not said as often as it should be said, companies that have a robust compliance program are usually better run companies because of the controls that are in place.

While the world is not free of U.S. companies that run afoul of the FCPA, to paraphrase Dick Cassin, there is certainly more anti-corruption compliance going on in the world, FCPA compliance does serve many interests of the U.S. Gates' passage above makes clear that the FCPA is doing what it was intended to do and much more. But of even greater significance is that the King of Saudi Arabia recognized the effectiveness in a business context. President-Elect Trump should immediately understand just how powerful the FCPA is in making America great.

Chapter II - Compliance Going Forward

By Matt Kelly

Well, the American people, in their endless wisdom or lack thereof, elected Donald Trump to the White House and gave us a Congress even more deeply divided than before.

The post-mortems on the election and and what it means for the country will be many and will last for months, but compliance officers can get started with a few items that should be on the radar screen today.

The House is a mess. The most ardent opponent of regulation relevant to compliance officers (Sarbanes-Oxley rules, PCAOB powers, SEC disclosure efforts, and so forth) was Scott Garrett, a New Jersey Republican who sat on the Financial Services Committee and chaired the Sub-committee on Capital Markets. Garrett lost his seat in this election. What's more, the vice-chair of the sub-committee is retiring—so we don't know who might lead that panel just yet.

The chair of the House Financial Services Committee itself, Jeb Hensarling, is also a foe of all things regulatory. But Hensarling typically has gone after other targets, such as reforming Fannie Mae and Freddie Mac, or trying to kill the Export-Import Bank. Hensarling *might* try to push his Financial CHOICE Act during the lame-duck session. That legislation tries to curtail Dodd-Frank stress tests and to reform the structure of the Consumer Financial Protection Bureau.

Given the general dysfunction of Congress, however, this bill is likely to go nowhere. So it all starts anew in 2017 under a Trump Administration and new House leadership.

Remember the SEC nominees. We still have two nominations pending for the Securities & Exchange Commission: Lisa Fairfax, a Democrat; and Hester Peirce, a Republican. They were endorsed by the Senate Banking Committee last spring and have been in limbo ever since, held hostage as part of a larger Senate fight over corporate disclosure of political spending and other SEC-related issues.

Could the Senate now approve Fairfax and Peirce in the lame-duck session? Maybe, but the fights that left them in limbo still exist. If the Democrats who originally started this spat (by putting a hold on Peirce's nomination) get spooked at whom a Trump Administration might nominate, that could break the logjam. Or Republicans might kill the nominations now and wait for new nominees in 2017.

Remember the SEC chairman, too. For a while people speculated that SEC Chair Mary Jo White might remain on the job into a Clinton Administration, mostly since the Senate might refuse to confirm anyone Hillary Clinton named as a replacement. OK, that scenario has passed—so who might Donald Trump nominate?

Honestly, nobody outside Trump circles has any idea. The next chairman needs to deal with Trump on the executive side and the liberal firebrand Sen. Elizabeth Warren on the Senate side. I can't imagine anyone with the temperament to handle both people on a regular basis. I can't imagine that anyone intelligent enough to run the SEC would actually want the job under those circumstances.

Check out CNN's up-to-the-minute coverage of Trump's nominations

CFPB, PCAOB remain in limbo. The SEC chairman also gets to decide the fate of the chair of the Public Company Accounting Oversight Commission. Let's remember, PCAOB chairman James Doty has only been *acting* chair for a year now. His term formally expired in October 2015. Mary Jo White decided to leave Doty in his job until the SEC is back to the full complement of five commissioners—and Lord knows when that might happen.

So Doty remains in his job either until he leaves the job on his own, or until a new SEC chairman names someone else to replace him. On a practical level that means the PCAOB will keep on doing what it's doing, pressuring audit firms to be more skeptical during audits. Remember that the next time you're gathering evidence for SOX control effectiveness.

Meanwhile, Hensarling and others in Congress want to reform the CFPB so it has a bipartisan, five-person oversight commission like the SEC and other agencies. They also want to curb its rulemaking ability and its enforcement power. That might become more difficult now that the Consumer Financial Protection Bureau (CFPB) scored its high-profile win against Wells Fargo, but don't put anything past Congress—especially infighting that breeds uncertainty but accomplishes nothing else.

None of this will matter any time soon. The plain truth is that Donald Trump isn't qualified to be president. He is erratic and impulsive, and can't focus his attention long enough to articulate a genuine policy framework like Corporate America needs to function in today's economy. His slogans sound great, but that's all he's got.

That reality dictates a few consequences right away:

First, he will need more time to pull together an administrative bureaucracy, since more people will be afraid to work for him. All those section chiefs, deputy assistant secretaries for policy and the like; maybe smart people will eventually come to his team, but not at the beginning.

Second, Trump will have other battles to fight, personally and politically. Let's remember, our president-elect is facing various civil fraud trials. Allegedly he's under IRS audit, although if you believe that you need your head examined. He also promised to sue the women who say he sexually assaulted them.

We might also tumble into recession, thanks to the sharp market turmoil we'll see this week and the fact that companies across America are tapping the brakes on business plans while they wait to see what a Trump Administration does. And then will come the inevitable foreign policy crisis, as leaders elsewhere try to push Trump to see what they can get away with.

All of this means that the concerns of compliance officers, regardless of your political leanings, are so far on the back burner they might as well be in the deep freeze. The executive branch won't be able to move on any concerns you have in a substantive way for quite some time. Look to the legislative branch first, but given the dysfunction we've seen there, don't hold your breath

Compliance in the Trump Era, Part I: The SEC

SEC Chairman Mary Jo White has announced her resignation, firing the starting pistol for the Trump administration to reshape financial regulation in this country.

Compliance officers are uneasy about what the incoming Trump Administration might mean to them, and for good reason. Still, we have a few early clues to consider, so let's try to deduce a few probable outcomes.

Paul Atkins, a Republican SEC commissioner from the 2000s, is leading the Trump transition for the SEC, Commodities Futures Trading Commission, and related agencies. Atkins has been holed up at Potomak Partners, a consulting firm that acts as agency-in-exile for former Republican SEC officials awaiting possible return to power. He hangs out there with Kathleen Casey (on the job 2006 to 2011) and Dan Gallagher (2011 to 2015).

Do we know that Atkins, Gallagher or Casey will be Donald Trump's choice to lead the SEC? No. Regardless, Atkins will have at least some influence on who that person will be, and more influence on the agenda that Trump will want that person to pursue.

The logical place to start, then, is to explore which issues Atkins considers important: ones he raised when he was on the SEC a decade ago -- and ones he's likely to push now, along with other Trump advocates at the Treasury Department and on Capitol Hill.

We also need to remember that compliance officers will feel the bite of the Trump administration's changes in two ways. More immediately, we will see a change in how the SEC treats enforcement and rule adoption. Over the longer term, we might see changes in the scope of what the SEC does, thanks to new legislation.

1. Two Places to Start

While Atkins was at the SEC in the 2000s, he railed against large fines imposed on companies for corporate fraud, taking the usual Republican line that shareholders already suffered damage from the fraud itself. The better approach, he argued, was to deter misconduct by holding individuals personally accountable.

Atkins also was no fan of freewheeling whistleblower protection laws, nor of the SEC whistleblower rewards program established by the Dodd-Frank

Act. (He had already left the SEC by the time Dodd-Frank came along, but testified against it at Senate hearings.) Atkins favored mandatory internal reporting of misconduct before someone could be eligible for a whistleblower reward.

Those two points *could* carry a lot of implications for the compliance community—and not all of them unwelcome, either. But we need to remember that Atkins (and his Republican fellow travelers) advocated those positions years ago. The question is how those 2000s-era views about corporate penalties and whistleblower protections might fit into our late 2010s regulatory world today.

For example, when Atkins complained 10 years ago that large fines against corporations only harmed investors a second time, the SEC was busy cleaning up *accounting* fraud from the Enron and WorldCom era. Today the SEC's largest fines tend to be about *non-financial* misconduct: violations of the FCPA, whistleblower retaliation, or even cybersecurity failures.

That is, we have a significant volume of SEC enforcement action in which investors don't suffer direct harm (nowhere near the pain they suffer when an accounting fraud finally unravels in a financial restatement), but misconduct has still happened. So how would Atkins and his colleagues view those cases?

Would they support the Yates Memo standard of full cooperation to identify individual culprits? How much cooperation and investigative support would qualify as "full" anyway? How widespread would misconduct need to be to deserve a fine at the corporate level? (Looking at you, Wells Fargo.)

I suspect Sen. Elizabeth Warren will put those questions to Trump's eventual SEC nominees once those people get confirmation hearings. Compliance professionals will want to listen to the answers.

2. A Word on Whistleblowers

Second, a large priority for compliance officers today is anti-retaliation against whistleblowers. As I've argued elsewhere, the SEC's Office of the Whistleblower has elevated anti-retaliation into a sea change at Corporate America. We have moved from trying to prevent specific acts of retaliation to cracking down on any impediment a company might try to impose on employees' ability to raise concerns about misconduct.

Repealing that part of the Dodd-Frank Act (Section 922) would be a tough

sell. Even Republicans like to protect whistleblowers, although they primarily want to encourage whistleblowing about abuses in government rather than abuses in Corporate America. And above all, repealing Section 922 would take an act of Congress, rather than a policy change from a new SEC chair.

A Republican-leaning SEC, however, *could* reorganize the Office of the Whistleblower and change its enforcement priorities. For example, nothing in Section 922 says the SEC *must* have a dedicated whistleblower office; a new chairman could somehow merge those operations into the Division of Enforcement. Likewise, the statute does say, "No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower…"

Do pre-taliation clauses in employment contracts count as indirect harassment? The current SEC leadership believes so. Would new, Trump-selected leadership put that enforcement theory into the grave and leave whistleblowers to pursue their own claims in federal court? (That's the recourse allowed under the statute.) Possibly, although that will spark inevitable accusations that the Trump Administration is anti-whistleblower. I don't know that The Donald will care.

3. What Really Matters

We're talking here about issues most important to ethics & compliance officers under a Trump administration (I'll tackle FCPA enforcement another time), but we should also remember one prime fact: the Trump administration's minions have more important ideological objectives right now. When they talk about "repealing Dodd-Frank" they really mean *easing rules for capital formation.*

Those are enough thoughts for today. We'll all have plenty more to think about this in the days to come.

Remember what Trump himself is all about: doing deals. Look at the advisers and potential nominees who have emerged so far: Atkins; ex-Goldman Sachs banker Steve Mnuchin and billionaire investor Wilbur Ross, leading candidates to be Treasury Secretary; and Rep. Jeb Henslaring, chairman of the Financial Services Committee. We also have Michael Piwowar, the lone Republican on the SEC today.

Those names tell me that this crowd is far more interested in dismantling the Financial Stability Oversight Council and clipping regulators' ability to

name systemically important financial institutions.

Well, that's interesting, because today the Justice Department's Yates Memo purports to do exactly that: hold individuals personally accountable for corporate misconduct. The SEC's official line is that it, too, seeks to hold individuals personally accountable whenever possible. So if conservatives mean what they say about punishing individuals—well, this is their big chance.

Yep, I know what you're thinking. I don't believe them either.

4. Two Points to Consider

First, remember that when Atkins complained about large corporate penalties in the 2000s, the SEC was busy cleaning up *accounting* fraud after the Enron and Worldcom scandals.

So we need to wonder how those 2000s-era views about large corporate penalties would fit into our late 2010s regulatory world. Investors *aren't* hurt by corporations bribing their way to more business; on the contrary, they benefit from it. We can say the same for whistleblower retaliation as well. Perhaps conservatives might argue that investors suffer because they bear the costs of an internal investigation, but that hardly qualifies as the same swift punishment they get when an accounting fraud finally unravels in a financial restatement.

Let's not mince words: corporate ethics & compliance officers are anxious about what the incoming Trump Administration might mean to them.

You're right to feel that way. The compliance community has made great strides since its modern form arrived with the Sarbanes-Oxley Act of 2002, and now we have an erratic, unqualified president-elect with few coherent thoughts about financial regulation and corporate conduct. His own unimpressive record as a businessman instills no confidence.

Still, Donald Trump is the president we have until, one way or another, he leaves office. So let's try to deduce what might come to pass for compliance officers. Even at this early stage, we have clues to consider.

The most important place to start for compliance officers is the future of the Securities and Exchange Commission. We already know that -- Why are we JUST NOW getting into the meat of his argument?

We *don't* know whether any of those three will be Trump's choice to run the SEC.

Given all that, we have three questions: What issues does Atkins want to reform most? What issues *could* he (and like-minded conservatives in Washington) actually reform any time soon? And which of those really matter to compliance officers worried about good corporate conduct and their own career prospects?

At that time, however, the SEC was busy cleaning up *accounting* fraud after the Enron and Worldcom scandals.

Today the SEC's largest fines tend to be about non-financial misconduct: corporate bribery, whistleblower retaliation, or even cybersecurity failures.

So we need to wonder how those 2000s-era views about large corporate penalties would fit into our late 2010s regulatory world. Investors *aren't* hurt by corporations bribing their way to more business; on the contrary, they benefit from it. We can say the same for whistleblower retaliation as well. Perhaps conservatives might argue that investors suffer because they bear the costs of an internal investigation, but that hardly qualifies as the same swift punishment they get when an accounting fraud finally unravels in a financial restatement.

Within a matter of months, Trump will nominate a new chairman, plus two commissioners (unless, by some miracle, the Senate confirms the two Obama nominees who have been on hold for months).

Paul Atkins, Michael Piwowar and Jeb Hensarling are the only stalking horses we have for SEC policy right now.

Won't be easy to repeal large sections of law, foremost in Sarbanes-Oxley.

Remember what Hensarling and Piwowar like to complain about: FSOC, above all. Hensarling wants to address Fannie Mae and Freddie Mac; that will be easier said than done.

Atkins has long said fines serve no purpose. OK, we could see prosecutors slow-roll accounting fraud. Might that intersect with some new version of the Yates Memo, applied to SEC enforcement? Maybe.

Likewise, Office of the Whistleblower is enshrined in Dodd-Frank. But a new director of whistleblower could step back from policy pronouncements such as pretaliation, or whistleblower retaliation without underlying

offense.

They will want to relax capital raising rules as much as possible. That will range from easing up for large banks, by defanging the Treasury Department's ability to designate SIFIs; to even more liberal versions of Regulation A and A+. (If someone dubs this Regulation A++, I will punch you in the face.)

I do wonder about Office of Risk Analysis. I wonder about Office of Financial Research, which would be a tragedy since plumbing depths of financial risk is crucial.

Atkins wants investors to take on risks, and avoid regulators deciding what products should or should not come to market. That's a nice idea unto itself, but in the real world it has perils. For example, the Bush administration's refusal to regulate derivatives trading in the 2000s was one source of systemic risk that accumulated in the financial system. That risk accumulated because all investors kept passing it around to the next counter-party, and the next, and so forth—when in fact, someone should have stepped in and declared that for the sake of all parties, regulation was needed.

I will believe a private-sector solution to Fannie Mae and Freddie Mac when I see it. Republicans have never come up with a realistic plan to privatize those institutions yet.

I see Dimon more as a straw candidate: a name to make some parts of Wall Street feel comfortable, and some parts of anti-Wall Street incensed. Then Trump picks another name after the Wall Street types feel they've been considered, and the anti-Wall Streeters feel vindicated. But ultimately, let's remember that Dimon has far more money, power, and prestige where he is. Plus, on a personal level, Dimon's wife is Jewish and the strong anti-Semitic undercurrent in Trump's communications team would be difficult to stomach.

Disclosure as means of social policy—that will get a big rollback. I would not be surprised to see some sort of attack on the conflict minerals rule.

Changes to Section 921, allowing the SEC to prohibit mandatory arbitration for securities disputes. I could see that going away.

Could we see the Office of the Whistleblower somehow buried more deeply into the Division of Enforcement? Possibly—Section 922 of Dodd-Frank, which creates the whistleblower rewards program, doesn't specify exactly

how the SEC should do this.

A. Compliance in the Trump Era, Part I: The Justice Department

First, let's knock down the prospect of Congress revising the FCPA itself. Regardless of what Republican lawmakers say to score political points, changing this law is neither a priority nor in the party's best interest. Come 2017, Republicans will want to fulfill dreams like tax reform, deporting illegal immigrants and dismantling Obamacare. Amending a 40-year-old anti-bribery statute that hardly any conservative voters know about anyway is not high on the wish list.

Yes, Donald Trump **did once call the FCPA a horrible law**. Well, Trump says that about every law (other than the bankruptcy code). He also flip-flops on countless issues, depending on what stance gets him the most applause at whichever rally he is attending that day. What he said about the FCPA years ago is meaningless now.

We probably can assume that like many conservative business executives, Trump dislikes FCPA enforcement as Corporate America has experienced it in the last decade—but again, why waste political capital changing the law? He can bring about the relief that FCPA critics want by changing how the Justice Department (presumably led by **Attorney General-designate Jeff Sessions**) enforces it.

That's where compliance officers will need to pay attention. The grand question is whether the Trump Administration will reverse course on FCPA enforcement so sharply, and so publicly, that your board and CEO will no longer consider compliance programs a priority.

I think the answer is no.

1. Executive Branch Changes

First consider Jeff Sessions himself. Regardless of what else people might say about him as an attorney general, remember that he is a prosecutor. When he sees a crime, he will want to prosecute it. The FCPA is going to remain on the books (see above) and bribery will still be a crime, so when violations of that law do occur, somebody somewhere in your organization will still risk prosecution. Compliance officers can start by repeating that truth to your board, CEO and coworkers immediately.

If you want a bit more color on Sessions personally, listen to this **recent episode of Everything Compliance**, a podcast featuring me and a few other compliance thinkers—including Michael Volkov, a long-time FCPA lawyer who worked with Sessions and knows him well. As you can hear in the first portion of the program, Volkov believes Sessions will not turn a blind eye to corporate misconduct any time soon.

The better question is ask is *how* the Justice Department will prosecute FCPA violations, and what those changes to enforcement might mean for compliance officers arguing the necessity of a compliance program. The truth is, we won't know until Sessions takes office, names a deputy attorney general and an assistant attorney general for the Criminal Division (who are much closer to FCPA enforcement than the attorney general ever is), and those two people start announcing policy and prosecuting cases.

Still, we can ponder a few questions right now. And as best as I can deduce, the answers suggest that compliance programs will still be a valuable part of Corporate America's operations

2. Three FCPA Questions to Ponder

First, **what happens to the FCPA Pilot Program?** The **FCPA Pilot Program, rolled out last April**, offers companies a path to avoid onerous FCPA sanctions. The parameters are simple: companies that self-disclose a violation, cooperate fully, and remediate their problems can win sharp reductions in the penalties they might ultimately suffer. If the offense is small enough and the company does everything right, the Justice Department might decline to prosecute. We've already **seen declinations for Nortek, Akamai Technologies, Johnson Controls** and others.

The pilot program is a success, and it's popular. Not only do I believe it will continue, I also believe a Sessions-led Justice Department will embrace its principles as a way to avoid prosecuting companies in favor of pursuing individuals. That is, if your company self-discloses, cooperates fully and remediates, the DOJ will automatically decline to prosecute the company.

That idea may be a stretch, but it eases the regulatory enforcement against companies, still lets the Justice Department hold individual offenders responsible, and blunts accusations that the Trump administration is soft on corruption. Which is what the Trump administration wants.

Second, **what happens to DPAs and NPAs?** Deferred- and non-prosecution agreements took root during the Bush Administration. Prosecutors needed some way to force reforms at companies that experienced misconduct, short of issuing a criminal indictment and bringing the company to trial. DPAs and NPAs seemed like logical tools to use.

How will Sessions and his minions view those tools? We don't know. While in the Senate, Sessions wasn't thrilled with them. The FCPA Professor blog **dug up some comments Sessions made in 2009**, where he clearly was skeptical about them. His words: they "seem to go beyond strict enforcement of the law and try to preserve corporations who perhaps should be charged and suffer whatever consequences might result from their criminal acts."

Sessions has a point—but it's an easy one to make when you're a senator, much more difficult to make when you're attorney general. When the accounting firm Arthur Andersen was indicted in 2002 for its role in the Enron scandal, the firm went out of business. More than 80,000 people lost their jobs for misconduct committed by only a handful. That is where the push for DPAs and NPAs came from.

Keeping DPAs and NPAs would be a wise move for Sessions. They still provide the vehicle to avoid draconian steps like an indictment, and prosecutors could still take a light touch to penalties imposed.

What about the Yates Memo? The Yates Memo, adopted in 2015, says that if a company under investigation wants to win any cooperation credit, it must hand over all information it can find about individuals suspected of misconduct.

Even if a new deputy attorney general publishes another guidance memo, I can't imagine the spirit of this policy going away. It gives Sessions and his future prosecutors what they want: the ability to pursue individuals, which gives them reason not to pursue companies. Especially if the company meets the Pilot Program standards for disclosure and cooperation, and then gets a settlement with no significant penalties.

3. Bottom Line for Compliance Officers

None of the above works well if a company guts its FCPA compliance program. Whistleblower programs will still be necessary to help launch investigations so you can self-disclose. Document retention policies will still be necessary so you can meet the demands of the Yates Memo or whatever

successor memo comes along. The CEO and board will still need to set a strong tone at the top, so that prosecutors focus on the middle managers and third parties paying bribes rather than on the top brass.

Will the Trump administration give companies an easier path out of FCPA trouble? Probably. But a compliance program is going to be the vehicle that lets the company drive down that path. Tell that to the audit committee and CEO when they ask about taking away your gas money.

B. Pondering the "Trump Risk" — Four Companies to Watch

Over the past month, two companies became the first public filers to cite the incoming Trump administration as a risk worth disclosing in the Risk Factors section of their quarterly reports. We haven't seen any more since then, although we will in the future.

Several people wrote to me after that post, essentially saying—well, so what? The disclosures from those first two companies didn't offer any specifics, and companies cite political risk in their Risk Factor disclosures all the time. Plus, these people said, Corporate America knows hardly anything about President-elect Trump's priorities; the risks that a filer discloses today are premature.

That's fair criticism. By next spring, however, the Trump administration will be moving ahead with its agenda (whatever that might be) *and* companies will be filing their reports for first-quarter 2017. So we should see a much broader collection of Trump risk disclosures by then. Some might even transcend the boilerplate that companies usually paste into their risk factors and, you know, say something.

Which companies are most worth watching for what they say about the Trump Administration? I have five picks, in alphabetical order.

Apple. Apple is one of the companies Trump mentioned by name during his campaign, saying it should bring production of its products back to the United States. If not, he threatened, a Trump administration could impose a tariff on those products (of anywhere from 33 to 45 percent, depending on which Trump tirade you're quoting) as they re-enter the U.S. market for sale.

Do I believe Trump will make good on that specific threat? No, but he's likely to dragoon born-again protectionists in Congress into changing U.S.

trade law somehow. And Apple reportedly has asked some suppliers about whether moving some manufacturing back to the United States is possible.

Regardless, Apple, more than any other company today, embodies the ideas of the modern supply chain. So any disclosure of how a Trump administration might affect its supply chain strategies, risks and benefits would be worth reading.

AT&T. We all know AT&T has proposed an $85 billion takeover of Time-Warner. Trump immediately railed against that deal, calling it exactly the concentration of corporate power that he wants to prevent. I'm sure Trump would rail at other mega-mergers, too, if given the chance, but this one is the largest we've seen in a while and had the headlines to catch his attention.

In theory, Trump will have more power to act here since he gets to appoint the Justice Department officials who will perform the required antitrust review. Who will that assistant attorney general for antitrust be? We don't know. And Trump has fired Kevin O'Connor, a highly respected former Justice Department official who had been leading the transition team for that department.

Still, sometime next year this politically volatile merger *will* come up for antitrust review. And despite the Federal Reserve edging toward higher interest rates, and Trump's infrastructure spending plan to revive organic growth in the economy—the macro-economic environment will still be ripe for mega-mergers for a while yet. So what happens with AT&T is another item to watch closely.

Deutsche Bank. Deutsche Bank is interesting because it is one of the largest lenders to the Trump Organization—and now the head of the Trump Organization will oversee numerous U.S. investigations into possible misconduct at the bank.

According to one Wall Street Journal estimate, DB has participated in loans of more than $2.5 billion to Trump or his business interests since 1998. Meanwhile, the bank is currently under investigation by the Justice Department for mortgage securities fraud. In September word leaked that the Justice Department wanted a settlement of $14 billion, high enough to jeopardize DB's capital reserves and cause heartburn in Europe. By last month a new number of $5.4 billion emerged.

Now, I never expect DB to disclose, "We are in considerable regulatory

enforcement trouble with the United States, but the president knows we could cut off his company's access to liquidity tomorrow." Still, that inherent conflict of interest will always be present during the Trump administration. The bank should at least acknowledge that the relationship exists, and ideally it would give investors some sense of the extent of that relationship.

And Deutsche Bank is only one of many companies that will now have potential conflicts of interest with the United States.

United Technologies Corp. UTC might face more pressure than any other company on this list. UTC is the parent of Carrier Corp., which Trump singled out for criticism after Carrier announced it will move 1,400 jobs from Indiana to Mexico. As of this week, **those Carrier workers still expect Trump to save their jobs**, and UTC has no plans to change Carrier's course.

Presumably that means UTC will face the same international trade risks that Apple might face, but with more pointed political significance. UTC did not name any specific political risks in its third quarter report (filed at the end of October). In its 10-K filed earlier this year one can find the usual boilerplate about "changing political conditions," but that's about all.

One hint: UTC does list U.S. government contracting as a risk, since that's a lucrative line of business for the company. Could Trump try to cut a deal, where he threatens to cancel other contracting work if Carrier proceeds with its relocation? Or offer more contracting if Carrier cancels its plans? That sounds like the sort of deal Trump would like to make, although it violates any number of good government and good business principles.

The Bigger Picture

Any other number of companies will face uncertainty and risk because of the Trump Administration. So why do these four matter so much? Because we don't yet know how much Trump might try to use the executive branch for his personal vendettas and political score-settling—with Corporate America as the victim. Any of these four companies could demonstrate that Trump sees his judgments and interests as paramount, institutional history and integrity be damned.

Quarterly reports for first-quarter 2017 will start hitting our desks in about five months. Should make for some interesting reading.

Chapter III - A New Administration: A New FCPA Enforcement Regime?

By Mike Volkov

Now that the dust has settled on this turbulent campaign season, everyone is in the prediction game, especially when it comes to FCPA enforcement. It is easy to make predictions of significant change. It is easy to take campaign rhetoric and assume that such rhetoric will result in quick and immediate change.

As a veteran of transfers of power (being an old D.C. lawyer), I have seen "change" in federal governments through the years. As we watch the transfer of power from the Obama administration to the Trump administration, we will all be watching carefully.

There is no question that the Obama administration implemented the most aggressive enforcement regime seen in my lifetime as a D.C. lawyer. Across the board, there were increases in criminal, civil and regulatory enforcement. But the change was not as significant in comparison to the prior Bush administration. If you will recall, in the face of major frauds in the corporate world, the Bush administration ramped up white collar criminal enforcement, and ushered in the legislative changes in the Sarbanes-Oxley Act.

Most importantly, the Bush administration picked up the FCPA and started to aggressively enforce the law, for the first time in its history. The major rationale for increasing FCPA enforcement from the Bush administration perspective was to reduce the threat of terrorism. Corrupt governments were likely to become destabilized, resulting in increased risk that terrorist organizations could camp inside the country borders. It was a rational that went hand in hand with the Bush administration's war on terrorism.

The Obama administration continued with the aggressive enforcement of the FCPA, and cited a number of rationales in support of its policy, including stabilizing new governments and economies. The Obama administration cited many other benefits including human rights, economic

efficiencies and fair competition in the global marketplace.

Along the way, the Obama administration's aggressive enforcement regime launched a global movement in support of anti-corruption enforcement, part of which reflected foreign government's desire to share in the financial penalties paid by corporations, and another part which reflect sharing of a common ideal – reducing corruption to the benefit of the public interest.

The US FCPA enforcement regime is more entrenched now then everyone thinks. It is entrenched in the Justice Department and the SEC, and has been incredibly successful from a financial benefit standpoint. Since 2009, the government has collected over $4 billion in fines and penalties. That is not chump change as the expression goes.

To those doomsayers who expect or predict FCPA enforcement to dwindle under the new Trump Administration, I would urge you to take a deep breath and reflect on the countervailing forces. No matter who leads the Justice Department among the rumored candidates, you can expect aggressive enforcement of criminal laws, even against white collar criminals. The confluence between the Bush and the Obama administrations is unlikely to be broken by the new Trump administration.

Similarly, the likelihood of any serious dip in FCPA enforcement is remote. FCPA enforcement is entrenched and no one wants to be responsible for the political fallout of promoting "bribery" in any context, domestic or foreign. Of course, I could be wrong but it is hard to expect that any administration would ever get behind some type of cut back in "corruption" enforcement, notwithstanding the President-elect's prior statement that the FCPA was a "horrible" law.

There is one interesting area that I would urge practitioners and companies to watch – civil antitrust enforcement. During the campaign, Donald Trump criticized the pending AT&T- Time Warner merger and promised to block the merger. Traditionally, Republican administrations have reduced civil antitrust enforcement, especially in merger reviews. Instead, Republican administrations continue and sometimes increase criminal cartel enforcement.

The new Trump administration may face an interesting issue – will the DOJ's enforcement regime match the candidate's rhetoric or will the Republican approach lead to the typical reduction in civil antitrust enforce-

ment?

There are many other areas to watch as well – my focus here is only FCPA and antitrust enforcement. It will be an interesting transfer of power to say the least, especially in the area of civil and regulatory enforcement.

Chapter V - Should I Stay or Should I Go?

By Jay Rosen

Darling, you gotta let me know. Should I stay or should I go? (The Clash -- Fall 1982)

August 2015 -- Secretary of State John Kerry calls corruption a "root cause" of violent extremism. The **fight against corruption** has to be a **global security priority** of the first order," he said.

"**Bribery, fraud**, other forms of venality endanger everything that we hold dear, everything that you value. They feed organized crime. They gnaw away at nation-states. They take away the legitimacy of a nation-state. They contribute to **human trafficking**. They **discourage honest** and **accountable investment**, and they undermine entire communities," Kerry said.

If you say that you are mine. I'll be there till the end of time. So you gotta let me know. Should I stay or should I go?

November 2016 -- President-Elect Trump talks about campaign reform, term limits and ending corruption in DC and on Wall Street.

It's always tease, tease, tease. You're happy when I'm on my knees.

November 2016 -- President-Elect Trump considers nominating JPMorgan's Jamie Dimon as Treasury Secretary. Dimon's JPMorgan has "systematically engaged" in legally dubious practices for years, says Richard Eskow at *The Huffington Post*. The company has "paid out billions to settle charges" that include bribery, corruption, perjury, forgery, investor fraud, and more. JPMorgan's "vast wealth" means lawsuits are nothing more than the cost of doing business in a "corrupt political system," which has failed

to actually prosecute any executive connected to the financial crisis. What a shame.

One day is fine and the next is black. So if you want me off your back. Well, come on and let me know. Should I stay or should I go?

June 7, 2016 -- If House Financial Services Committee Chairman Rep. Jeb Hensarling, R-TX, has his way, June 7, 2016 will soon be remembered as the day that the death clock started on the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Just as he recently promised, Hensarling revealed the Republican-crafted plan to repeal Dodd-Frank and replace it with a "pro-growth, pro-consumer" alternative.

In a speech given at the Economic Club of New York on June 7, 2016, Hensarling revealed the Republican plan, entitled the Financial CHOICE Act. "CHOICE" in this instance stands for "Creating Hope and Opportunity for Investors, Consumers and Entrepreneurs."

Per an executive summary of the Financial CHOICE Act provided by the House Financial Services Committee, those sections are:

1. Provide for election to be a strongly capitalized, well-managed financial institution
2. End "too big to fail" and bank bailouts
3. Empower Americans to achieve financial independence by fundamentally reforming the CFPB and protecting investors
4. Demand accountability from financial regulators and devolve power away from Washington
5. Demand accountability from Wall Street through enhanced penalties for **fraud and deception**
6. Unleash opportunities for small businesses, innovators, and job creators by facilitating capital formation
7. Provide regulatory relief for Main Street and community financial institutions

If I go there will be trouble. And if I stay it will be double. So come on and let me know....

Here is my disconnect. If President-Elect Trump campaigned on a platform of removing corruption from DC and specifically targeting a former US President and his Secretary of State wife, then he cannot bring to an end such vital regulations as the FCPA, Sarbanes-Oxley and Dodd-Frank. These are worthwhile regulations that not only even the playing field of US companies conducting business abroad but also look to prevent corrupt companies from perpetrating fraud globally and in our own backyard e.g. Wells Fargo.

This indecision's bugging me. If you don't want me set me free.

We need to make sure that we do not throw out the proverbial baby with the bathwater. While the Republican Party has traditionally adopted an anti-Government, anti-regulatory stance, not all regulation is bad.

If you share Secretary Kerry's assertion that "corruption is a root cause of violent extremism", and if this in-coming administration is dedicated to eradicating global terrorist organizations, as well as domestic and international corruption, then we must answer the Clash's question in the positive that... FCPA, Sarbanes-Oxley and Dodd-Frank certainly must **STAY!**

Chapter V - What does the election of President Trump mean for compliance?

By Jonathan Armstrong

With some around the world still in a state of shock over the election of President Trump we have had little time to think about what the compliance implications may be. Whilst his acceptance speech was short on policy there could be some compliance ramifications. In the coming days seasoned Trump-watchers are likely to have more to add on the likely compliance agenda for 2017 and there are people in the US better placed to comment. With that in mind however here's some quick initial thoughts:

1. **Anti-bribery**

President-elect Trump has previously been a critic of the US Foreign Corrupt Practices Act of 1977 (FCPA) and in particularly what he seems to suggest has been an over-aggressive enforcement strategy adopted by

previous US administrations. In 2012 for example he spoke out about the FCPA action against Walmart over its payments in Mexico. He said that the law was a "*horrible law and it should be changed*" and that it disadvantaged US corporations, despite the fact that US corporations currently only make up three of the top ten FCPA largest enforcement actions. Whether President Trump will want to repeal the FCPA is probably a more long term question. More likely in the short term could be a damping down of the enforcement regime – FCPA's early history was not one of aggressive enforcement and there could be a possible return to that strategy. How this would square against an election promise to clamp down on corruption and his supposedly "*crooked*" opponent however remains to be seen. President-elect Trump also hinted on Twitter as recently at 18 October 2016 that corruption would be one of the core elements of his term in office tweeting "*and now bribery? So CROOKED. I will #draintheswamp*".

Any reduction in FCPA activity could cause implications with cross-border enforcement. The Director of the Serious Fraud Office, David Green, hinted today that there would need to be a reassessment of the working relations between the SFO and the US authorities if that happened saying "*I suppose if there was a policy of less enforcement, then our relationship would have to be reassessed*".

2. **Privacy Shield**

We have talked in our Privacy Shield FAQs about the many challenges that Privacy Shield faces. One of the issues that we highlighted from the very start was the fact that in some respects Privacy Shield relies on executive actions, including Presidential Policy Directive 28, which could be overturned by any new President. If the new administration feels unable or unwilling to give the promises that the Obama administration gave Privacy Shield faces a rocky future. As we have outlined in our FAQs it is already subject to various legal and regulatory challenges and it is also subject to annual review. The fact that there is a new administration must add to the uncertainties Privacy Shield faces.

But what is the likelihood of the new President overturning President Obama's work? President-elect Trump's views on the NSA are hard to determine at this stage. On 26 October 2013 he tweeted "*can you imagine the anger and disgust when the heads of other countries found out that their cell phones were being tapped by NSA. Obama mess*". He had however seemingly suggested that the NSA extend their powers on 23 October 2013 when he said "*why doesn't President Obama call upon the NSA to fix the*

badly broken website – then they could spy on all of the many cheaters and arrest them!". On 27 July 2013 he had also seemingly supported Edward Snowden saying "*#snowden not a traitor. Shared info with fellow Americans who have a right to know about NSA snooping [expletive deleted]*".

Whatever the new President's views he is likely to need to act swiftly once he assumes office to give Privacy Shield any hope of a lasting future. However speaking in Brussels on 9 November 2016 the Chairwoman of the US Federal Trade Commission, Edith Ramirez said that she felt that the Trump administration was unlikely to make dramatic changes on privacy and data security enforcement given the concerns about privacy amongst US voters "*with any change in administration, there are always going to be, of course, shifts and different approaches taken*" she said "*but I believe there will be a continued emphasis placed on these very important issues. I certainly know, from my work at the FTC, that these are issues that are of significant importance to American people*".

3. **Sanctions**

A feature of the election has been a possible review of America's relations with Russia. This could have implications for the US sanctions regime - again however there are some inconsistencies. On 4 October 2016 President-elect Trump said that Mrs. Clinton's "*close ties to Putin*" deserved scrutiny. He has also made allegations of connections between people in the Clinton camp and President Putin. If there is to be a thawing of relations with Russia a review of the sanctions regime could be one way of signaling a desire to move on from the past.

4. **Other issues**

Clearly it is very early to be making predictions as to how the world of global compliance will change. Other election statements – like the lack of evidence of climate change – could drive additional policy changes. It would be fair to say however that the new administration is likely to be less predictable than the Obama administration and that in itself means that organizations are going to have to invest more in compliance awareness and planning.

1. Consider the other options available to your business including model clauses (recognizing they are also subject to challenge) and BCRs. BCRs do have a new footing in GDPR and may be more resistant to challenge. BCRs will not be the answer for everyone however;

2. Review your privacy policy. Some organizations have not reviewed their policy since the fall of Safe Harbor in October 2015. Whichever way you make your data transfers lawful you should still be reflecting your current practices in your privacy policy.

Visit CCI's "Trump & Compliance" page for regular updates and additional commentary about the new administration's impact on GRC.