



Washington Policy

Gensler for SEC/Senator Brown Outlines Banking Committee Agenda

The financial services industry received a reminder of the impact of the new Senate majority under a Biden Administration with the reported selection of Gary Gensler to Chair the SEC and Senator Brown (D-OH) outlining the Senate Banking Committee's agenda (now that he is set to assume the Chairmanship pending the certification of the GA senate elections). Gensler has been leading portions of the Biden financial services transition team and will be an aggressive SEC Chairman, in our opinion, and his confirmation hearing should outline his key agenda items. As for the Senate, incoming Chairman Brown is prioritizing continued fiscal support for the economy, but will be expected to work closely with regulators to address his concerns on reestablishing an aggressive bank regulatory environment.

Gensler for SEC Chairman. Gary Gensler, former Obama-era CFTC Chairman is set to be nominated to Chair the Securities and Exchange Commission. Gensler was known as an aggressive regulator during his time at the CFTC and was the most effective in quickly implementing the Dodd-Frank Act. His aggressiveness earned him few friends and several lawsuits from the financial services industry. A 2014 [Reuter's article](#) captured his tenure at the CFTC well, describing how he was able to implement 70% of the rule writing required by Dodd-Frank and a quote from former Chairman Barney Frank saying “[Gensler] been one of the best regulators I've ever seen.” I remember Chairman Gensler as the only financial regulator in the room on the last night of the conference committee to finalize Dodd-Frank. He was there negotiating language to ensure his agency had as much power to regulate as politically possible. He has been leading parts of the financial services transition team for Biden, and we expect him to be an aggressive head of the SEC (assuming a likely confirmation).

Gensler and a fiduciary standard. Additional changes to Regulation Best Interest (Reg BI) will be on the SEC agenda, under a Chairman Gensler. The scope and timing are much more in doubt. The implementation of Reg BI during the Trump term leaves the industry in a much better position than if nothing was developed following the court nullification of the DOL Fiduciary rule. The SEC could be expected to return to a “rules based” approach towards regulation (which is more prescriptive) vs. the principals based approach adopted by the Trump regulators. Other agenda items are likely to include consumer protections, ETF and fund regulation/liquidity, ESG-related regulations, and regulation of rating agencies.

Bank regulatory picks. Incoming Chairman Brown is working with the Biden transition team in selecting regulatory picks for the federal banking regulatory agencies, according to a readout of a call he hosted with press. We view this as one of the most tangible and immediate impacts of the GA elections and the Senate Democratic Majority. We are keeping an eye on former Brown staffer Graham Steele, former Democratic Council for the Banking Committee for a potential selection. Even if not ultimately chosen, Steele outlined an aggressive Democratic policy agenda using existing regulatory powers in a 2019 *American Prospect* article titled: [Overhaul the Business of Wall Street](#). One key opening is occurring at the OCC, where the acting director is expected to leave at the end of the week.

Federal Reserve oversight. Incoming Chairman Brown (D-OH) does not believe banks are as healthy as the Federal Reserve has reported and has raised this concern with Fed Chairman Powell. Senator Brown does recognize that any legislatively-driven capital rule increases are highly unlikely in a closely divided Senate, but Democratic Pressure on the Fed could become impactful on future capital level decisions (similar to how his push during the Obama years with Republican Senator Vitter provided political cover for the Fed to implement an aggressive supplemental leverage ratio (SLR)).

OVERTURNING TRUMP-ERA REGULATIONS. The Senate is exploring options of overturning late-issued Trump era regulations, using the Congressional Review Act. Among the regulations we expect to be up for a vote, include a rule that eased the Volcker Rule, a rule related to fin-tech and bank

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partnerships, and a variety of SEC rules aimed at deregulation.

CEOs on the hot seat. Expect financial service industry CEOs back in front of the Senate Banking Committee with Senator Brown as Chairman. This is especially true for any bank that faces a potential scandal. While this is generally dismissed as headline risk, we saw the Congressional reaction to the Wells Fargo scandal cement the issue into the public conscious.

Other agenda items. Brown was noncommittal on a vote regarding pot banking and called for an extension of the federal eviction moratorium. Housing reform seemed to be a longer-term issue (net positive for housing), he discussed the potential for a fee-free banking account for consumers backed by the Federal Reserve (unlikely to be in next stimulus bill, but staff is researching), Brown would like to address climate change via the committee, has advised the CFPB head to resign, and has previously been a supporter of a 36% interest rate cap.

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