Our Perspectives:
Commentary on the economy & regulatory policies affecting financial companies

Barnett Sivon & Natter P.C.
ATTORNEYS at LAW
WASHINGTON, DC

Financial Regulatory Appointments in the New Administration[*]

Bob Barnett

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The new Administration will have an opportunity to quickly reset the financial services regulatory landscape early in its first year. How they do that will influence the next four years of financial services activity. While all new Administrations have the possibility of putting their own people in the commissions and boards that drive regulation, there now seem to be a large number of vacancies already existing as well as a large number of terms that end in the first 12 months. In addition, it has majorities in both houses of Congress and what appears to be a possibility of more relaxed rules in the Senate that will promote easier approvals of nominations.

Board of Governors of the Federal Reserve System. There are currently two vacancies on the Board of Governors, and as of yet, no one has been nominated or approved for the important new positon of Vice Chairman for Supervision, even though Congress created that position five years ago. Failing to even nominate someone for it suggests that the Administration did not see financial supervision as an important part of the job of the Board. While Governor Tarullo has assumed the role for the Board by heading the Board committee on supervision and testifying on the subject in Congress, Congress has not been satisfied.

By filling those two vacancies, the new President can quickly make his policy presence felt at the Board, and within 18 months, Governor Fischer's term as Vice Chairman of the Board of Governors terminates. The new Administration will have an opportunity to name a governor to that positon also.

While terms of Board members are 14 years, few serve terms that long and incoming members can fill the remaining years in one of the terms vacated by a previous member. None of the present members have yet announced that they would be leaving soon. Whether appointment of someone other than him as Vice Chairman for Supervision would prompt Governor Tarullo to leave the Board for other assignments is a possibility, since covering that sector of Board activity has defined

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his term on the Board, but he may be appointed to that spot or remain on after someone else fills it.

The key position, of course, is that of Chairman of the Board, and the term of Chair Yellen terminates in February of 2018, just over one year after the new President is sworn into office. Should he choose to do so, the new President could replace her at that time, and thereby completely change the senior ranks of the Board of Governors in less than a year.

Comptroller of the Currency. The term of Comptroller Curry ends in April of 2017, just a couple of months after the inauguration of the President. There is no reason to assume that Comptroller Curry will be asked to stay on, or that he would choose to do so if asked. More likely is that he will leave as soon as his term ends and the President will appoint an acting Comptroller until a new one is nominated and approved.

Federal Deposit Insurance Corporation. The term of Chairman Gruenberg extends until November of 2017, and it is likely that he could remain in office for that period should he choose to do so. His term on the board of the FDIC extends a bit longer into 2018. Vice Chairman Hoening does not serve a term of years as Vice Chair of the FDIC, so he can be replaced in that position at the will of the President. His term on the FDIC ends at about the same time as Chairman Gruenberg. Two board positons are filled by the Comptroller of the Currency and the Director of CFPB and the fifth positon is currently unoccupied. So within a little over a year, the entire board of the FDIC could be changed.

Securities and Exchange Commission. Chairman White has announced that she will resign at the end of the term of President Obama, so the new President will have the opportunity to immediately change senior management at that agency. In addition, there are vacancies in two of the other four seats on the commission, so the new President can appoint a majority of the Commission as soon as he wishes. In addition, Commissioner Stein's term ends in August of 2017, a few months after inauguration.

Federal Housing Finance Agency. Director Watt's term does not end until 2019, although there is some argument to be made that he is subject to removal at will, similar to the argument made and accepted by the D.C. Circuit Court of Appeals on the question of the ability of the president to remove the Director of CFPB at will.

Consumer Financial Protection Bureau. Much has been written about the positon of Director of this agency and its exposure to removal at the will of the new President. Suffice it to say that the courts will probably be dealing with this question for some time. At the present time, the most senior ruling from the courts on this question is that the president may remove the Director at will, and therefore, even though Director Cordray's term theoretically extends to July of 2018, there is a possibility that it may be cut short by presidential action. Even lacking that action by the President, because of the implications of the Congressional Review Act, as well as section 1054 of the Dodd-Frank Act, it may be that the ability of Director Cordray to fully engage in regulation and supervision as Director of the Bureau should he stay on until the end of his term will be limited.

Other financial services agencies. Other financial services agencies such as the National Credit Union Administration, the Commodities Futures Trading Commission, etc. will face much the same situation — i.e., Chairs either removable at will or whose terms end soon, and/or vacancies. The

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new President will be able to fully place his imprint on those agencies.

Summary. It is not unusual for there to be a major turnover among the financial services agencies upon the arrival of a new president. It is unusual, however, for a new Administration to be accompanied by a Congress in which the same political party as that of the president holds majorities in both houses. It is also very unusual for that situation to be accompanied by a very recent change in Senate rules that has permitted nominations to proceed absent the delaying tactics of a filibuster. The combination of these circumstances suggest that the new President can more quickly put his imprint on the regulation and supervision of financial services, should he choose to do so, than other presidents in the past.

Bob Barnett is a partner with the law firm of ***Barnett Sivon & Natter, P.C.***

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