

How Wall Street Regulators May Adapt To Trump's Return

By Jessica Corso and Sarah Jarvis

Law360 (January 1, 2025, 8:01 AM EST) -- The incoming presidency of Donald Trump is likely to upend some Biden-era policies at the U.S. Securities and Exchange Commission, leaving proposed rules on climate and artificial intelligence in the lurch while its sister agency, the U.S. Commodity Futures Trading Commission, could be given more authority over the cryptocurrency industry.

Trump has named former SEC Commissioner Paul Atkins to chair the agency, and should he be confirmed, he's expected to reverse many of the actions of outgoing Chair Gary Gensler that were deeply unpopular with the financial sector and with Republicans in general.

There are over a dozen proposed rules on Gensler's agenda that have not been finalized and about a dozen more that were promised but never proposed, according to the latest version of that agenda submitted to Congress in the fall of 2024.

Those regulatory leftovers include proposals to limit the use of predictive data analytics by brokerage apps, to impose crypto custody rules on asset managers and to enhance environmental, social and governance disclosures made by investment advisers. It's unlikely that any of these will be taken up by a Trump SEC, according to K&L Gates partner Lance Dial.

And any rule adopted between now and the inauguration is likely to be undone once the new president is in power, Dial said.

"Anything that goes final now is almost certainly subject to the Congressional Review Act," he said. "That now is being used almost traditionally and automatically at the end of an administration to undo what happens at the tail end of the prior administration."

The act permits Congress to overturn any recently adopted federal rules by passing a joint resolution of disapproval through both houses that then gets signed by the president.

It was used at least three times to overturn rules under the administration of President Joe Biden, while the first Trump administration overturned at least 16 rules through the act, according to the U.S. Government Accountability Office. One of those repealed by Trump was an SEC rule that would have required oil and gas extraction companies to disclose their payments to foreign governments.

Though it was adopted too long ago to be subject to the Congressional Review Act, one disclosure-based rule that is likely to get renewed scrutiny is currently before the Eighth Circuit challenging a new SEC

requirement that publicly traded companies report their greenhouse gas emissions.

The rule could be repealed by the incoming Republican majority on the commission, Dial said. In order to do that, the commission would need to put a proposed repeal out for comment and give a reason for repealing it "other than 'we just want to,'" he said.

Repeals that don't meet those requirements are not always successful. An attempt by the Gensler-led SEC to repeal a portion of a Trump-era rule on proxy advisory firm disclosures was met with skepticism by a Fifth Circuit panel, which said in a ruling dismissing the repeal that the agency didn't adequately explain the about-face.

"You have to be thoughtful about it, ensure that you're assessing the impact to the regulated entity," Dial said. "I don't think it'll be just a straightforward 'Hey, let's repeal all the rules.'"

As to what will replace those under a prospective Chair Atkins, many people's minds have turned to the digital asset space.

It's possible that the commission will attempt to write rules regulating the cryptocurrency industry, which has spent the past few years decrying the SEC's "regulation by enforcement" approach. Crypto platform Coinbase is currently tied up in litigation with the agency as it seeks to force the SEC to clarify the rules of the road by outlining, via a rulemaking process, which digital tokens are securities.

That lawsuit began after the commission denied Coinbase's rulemaking petition in 2023, over dissents from Republican Commissioners Hester Peirce and Mark Uyeda, who said the SEC should at least consider holding public feedback sessions discussing a potential crypto rule and what that might look like.

With Trump's victory, Peirce and Uyeda are set to be in the majority on the commission after Gensler and fellow Democrat Jaime Lizárraga step down later this month. The future of the SEC's third Democratic member, Caroline Crenshaw, is up in the air after Senate Republicans blocked her renomination in December.

While a Republican-led commission is likely to solicit more public feedback in the area of digital asset regulation, it's unlikely to write crypto rules in the near future, according to Crowell & Moring LLP's Christopher Mendez.

"I don't think you're going to see, at least not within the first year or two, a fully agreed-upon, adopted digital asset crypto-specific rule from the SEC," he said.

"What you will see, I suspect, is a bit more collaboration, or a bit more of a greater willingness on the part of the SEC to interact with market participants, solicit feedback, try to better understand the industry, the asset class, and try to write rules or put proposed rules on the table that will alleviate some of the concerns," Mendez added.

Another rulemaking proposal that could find its way before a Republican-led commission is one calling for the agency to change its definition of "accredited investor" so that more Americans can invest in the private markets. Both Uyeda and Peirce have expressed support for changing the definition.

But Mendez said he wondered how much the SEC could really accomplish over the coming years, given

how much time and effort it takes to enact change at the agency.

"Undoing or revising rules from the Gensler era involves formal processes, public comment periods, potential legal challenges ... all of which will take time and may not ultimately evolve to be the changes expected," he said. "The SEC is a large institution with formal frameworks and established policies, and with the natural regulatory inertia, immediate change will be difficult and will take time."

"I'm curious if a year from now, or two years from now, it is not the monumental shift or change that folks have expected," Mendez added.

FINRA

Ben Marzouk, an investment services partner at Eversheds Sutherland, said he would be keeping an eye on how prospective SEC Chair Paul Atkins' approach to rulemaking influences initiatives and new rules at the Financial Industry Regulatory Authority.

He said that in the year ahead, FINRA will prioritize focusing on broker-dealers' use of artificial intelligence when they communicate with their customers under their existing standards.

"They'll be interested in applying those standards to communications that are generated through artificial intelligence tools, making sure that firms supervise and adequately oversee the tools that they're engaging or putting to use to generate these communications and marketing pieces," Marzouk said.

He further predicted that FINRA officials will focus on firms that go further by using AI to recommend securities and investment strategies to their customers.

Terry R. Weiss, a securities partner at Duane Morris LLP, said FINRA will "undoubtedly" offer more guidance about cryptocurrency to firms in the year ahead. Given Atkins' stance as more pro-crypto than Gensler, there will likely be more interest in crypto among customers and firms. But how that shakes out in terms of rulemaking remains to be seen.

He added that measures against money laundering are always an important focus area for FINRA, and that 2025 will be no different.

"It's always an area that creates risk for the firms, creates risk for investors, and the firms have obligations under the AML laws to supervise for those things," Weiss said.

CFTC

When it comes to the Commodity Futures Trading Commission, all eyes will be on crypto in the year ahead. Sarah Riddell, an asset management and investment funds partner with K&L Gates LLP, said she anticipated that the agency would issue guidance or rules on acceptable practices for crypto, noting also that Congress might give the CFTC authority over the crypto spot market.

She said that "would give a lot more regulatory certainty to market participants."

Riddell, a former CFTC lawyer, said that whoever is nominated to run the CFTC in the next Trump administration will be friendlier toward crypto than the Biden administration.

She further predicted a lot of product innovation in 2025, pointing specifically to election contracts and exchange-traded funds. She'll also be monitoring the tokenization of real-world assets in the year ahead, saying optimizing the use of collateral is currently a hot topic.

"Collateral optimization and having those efficiencies to use certain types of collateral — allowing you to free up your cash collateral and use that for other purposes — is something the industry is looking at," Riddell said. "It'll be really interesting to see if that infrastructure can be built and used."

--Editing by Karin Roberts.

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