POTENTIAL DAY 1 ACTIONS BY THE ADMINISTRATION AND REGULATORS

There are a number of actions that agencies can take immediately upon President-Elect Biden's inauguration or shortly after to reorient financial regulation towards serving as a tool for economic and racial justice. Bold action in the first days can help lay out the priorities for the administration's first 4 years, clear away immediately harmful policies implemented by the Trump administration and set the wheels in motion for bigger efforts to come. A clean break with the previous administration will create momentum for aggressive action in numerous facets of financial reform.

Actions that can be taken in the first days of the administration include convening roundtables and working groups to develop solutions for bigger challenges, requesting information to get a head start on developing rules, and issuing statements of agency policy and guidance that set a new tone for an agency. In addition, agency leadership can withdraw policies that do not fit their priorities, stop or delay rules that have not yet taken effect, and commence removal of recently implemented rules. Taking these actions will generate immediate benefits for workers, investors and communities as well as charting a path and laying the groundwork for broader steps .

Agency

[Federal Trade Commission]()

[Department of Justice]()

Executive Office of the President

- Issue executive order calling on agencies to pause progress of all unpublished Trump rules and administrative actions to allow review of their legal and policy soundness. The order should tell agencies to:
    - Halt moving forward on rules and administrative actions not yet submitted for publication
    - Pause Federal Register publication of any rules that have been submitted but not yet published
    - Delay effective dates of all published, but not yet effective Trump rules
- Publish an executive order setting administration principles and priorities for financial regulation. Direct the Secretary of the Treasury to coordinate with FSOC leadership on how existing and new regulations are being used to promote these principles and to regularly report on their findings. The principles should call for financial regulation to help ensure that:
    - Private actors pay the costs of the risks they take in order to seek a profit, and the costs of their losses are not passed on to the broader public
    - Financial actors and actions that create risk to the broader financial system and economy are subject to regulation, regardless of how they are organized or what they call themselves
    - Low-income people and people of color are not targeted for predation through exploitative credit or other products, and are not excluded or disadvantaged in accessing products that help build wealth
    - Credit is delivered to those who need it on a fair, transparent, and equitable basis
    - Financial engineering does not improperly benefit financial insiders at the expense of the broader public, workers, and communities
    - Companies cannot avoid transparency and accountability requirements by staying in private markets
    - Individual investors know where to get trustworthy and reliable financial advice
    - The wealthy pay their fair share of taxes and cannot use financial engineering to avoid their liability
    - Growing inequality and economic precarity for increasing numbers of people and families is recognized as a systemic risk to our financial system and financial regulation is shaped to reverse, not increase, this growth.
    - The impact of climate change is treated as a systemic, economic risk that all financial actors may and must account for in structuring their business and investments

- Other statutory goals of financial regulation for specific regulators incorporate a long-term orientation of encouraging sustainable, fair, and just economic growth. Such other goals include maintaining the safety and soundness of the banking system, protection of investors, fostering fair, orderly, and efficient markets, encouraging capital formation, and the protection of consumers from unfair, deceptive, and abusive acts and practices.

All Agencies

- Request a stay on current agency litigation to permit review of whether continued participation fits with newly defined agency priorities. Develop an approach to litigation that is consistent with the new priorities and take appropriate measures to resolve each suit consistent with this approach.

Reining in abuses that permit private funds to evade regulation and engage in predatory activities

- **Set strict conditions on the ability of PE-owned companies to receive federal relief funds** if an investment fund or other SEC-registered investment advisor owns a sizable interest. Pay particular attention to sectors where there is a crucial public interest (e.g., healthcare, news, housing, education)

Treasury - Departmental Offices

- **Establish an office or senior appointee responsible for the intersection of financial regulation, inequality and justice**. Financial regulation is often narrowly focused on managing risks while minimizing burdens on the profitability of regulated institutions. Treasury should lead the way on the regulatory community expanding its understanding of the value of financial regulation to include the impact of financial institutions on inequality, worker's rights and racial justice. Assigning a senior appointee to this responsibility would demonstrate Treasury's commitment to this principle and ensure that such issues are properly considered in future rulemakings.
- **Establish an office or senior appointee responsible for coordinating the integration of climate change and financial regulation.** Financial markets and regulators are both increasingly recognizing that climate risk poses a systemic risk to the economy that cannot be addressed via individual action alone. Treasury should set the administration's policy tone on this issue, gathering information and coordinating development of financial regulations that address climate change.

Treasury - Treasury / Fed Facilities

- **Use the $80 billion remaining in the Exchange Stabilization Fund (ESF) to support targeted lending and investments --** Even if all resources authorized by the CARES Act are withdrawn, there is over $80 billion of core funding remaining in the ESF that can be used on purely administrative authority as equity to back targeted lending and investment programs to address the COVID related economic crises. This funding must be carefully targeted to those most affected by the current economic crisis, including low and moderate income workers, small businesses, and communities of color disproportionately impacted.

- **Use other Treasury tools remaining from the CARES act --** to the extent that other funding tools and resources remain available from the CARES Act, those should also be used to address the COVID created economic crisis in a way that prioritizes workers, small businesses and communities, and those most impacted by the crisis, including people of color.

Treasury - Financial Stability Oversight Council (FSOC)

Set a new direction for the FSOC

- To implement the Executive Order described above, **lay out an enhanced mission for the FSOC that reflects the EO's priorities** and includes the specific suggestions below.
- **Ask the heads of the FSOC member agencies to develop and report back a list of actions their agencies can take** to advance the goals of the Order.
- **Identify climate change as a source of systemic risk** and begin including its potential impact in the FSOC annual report, designation guidance and other FSOC measures of systemic risk.

Develop a more comprehensive framework for dealing with systemic risks posed to the financial system by nonbank actors who are not properly regulated today. risk

- **Convene a working group to advise on developing a broader view of systemic risk beyond the individual nonbank designation process.** The nonbank designation process as implemented in the Obama administration was not sufficient to capture the full range of unsupervised actors who posed a systemic risk to the economy. The new guidance should address risks posed by cross-cutting issues in repo markets, fund use of leverage, money market funds, and other activities. It should encompass both functional and firm-specific designation approaches. It should also include consideration of drivers of income and wealth inequality, and of the persistent racial wealth gap, as systemic risks.
- **Roll back changes to FSOC designation guidance and reinstate Obama-era guidance.** Specifically, reverse requirements for cost-benefit analysis and the 'likelihood of distress' prerequisite to designation. Reemphasize the systemic significance of individual

firms based on size and interconnection, and develop a framework for designation of clearly systemically important firms like large insurance companies.

- **Convene a working group to address limiting the ad hoc safety net provided by Federal Reserve facilities or shifting the costs onto the companies that benefit.** The Federal Reserve has now bailed out the broad financial markets twice in one decade. This creates significant moral hazard and helps market insiders unfairly. Financial agencies should review pre-funding of emergency assistance, conditions for receiving emergency assistance, and the scope and extent of assistance and how it relates to regulatory coverage.
- **Expand the definition of systemic risk to consider economic inequality** -- the FSOC should also incorporate distributional effects into analysis of systemic risk, as it is already incorporated into responsible cost-benefit analysis. Forms of financial engineering that inappropriately intensify the impacts of economic downturns on low and moderate income communities and increase economic inequality should be viewed as risks to the financial system even if they do not lead to market-wide failures in liquidity.
- **Increase funding and staffing at the FSOC**. Reverse Trump-era reductions and increase funding above Obama-era levels. The FSOC is funded via the Financial Research Fund, not general appropriations, so its funding can be increased without Congressional action.

<u>Limiting the risks posed to the economy by underregulated asset managers</u>

- **Launch a working group among FSOC members to find regulatory mechanisms to limit hedge fund leverage.** Leverage limits should reflect consideration of firm-level leverage, fund-level leverage and the “embedded” leverage of investing in derivatives and other products that provide exposure to large price swings with little up front investment. This working group should build on the efforts of President Obama’s Asset Management Working Group initiatives.
- **Restart defining FSOC approach to asset managers** to avoid regulatory arbitrage that allows asset managers to perform banking functions without any of the safety and soundness rules that banks must follow. Incorporate both designations of individual funds or complexes of funds and an activities based / functional regulation of riskiest parts of asset manager activities. Proper data collection is a key foundation to the success of these efforts.

Treasury - Office of Financial Research (OFR)

Develop a stronger framework for dealing with risks posed to the financial system by nonbank actors who are not properly regulated for systemic risk

- **Enhance the OFR's mission to align with the Executive Order discussed above and FSOC's updates**. The OFR, in conjunction with FSOC, should develop an agenda for the next four years that allow it to most effectively provide data and analytical support for the broader regulatory agenda of the new administration.
- **Strengthen information sharing among FSOC member regulators using existing OFR processes and agreements, particularly of Form PF hedge fund data collected by the SEC**. FSOC and OFR should put in place an expanded and improved process for sharing information among regulators, including bank supervisory information and of private funds information collected by the SEC, so that regulators, FSOC, and OFR can coordinate oversight between connected markets.
- **Begin drafting OFR subpoenas to close data gaps**. Regulators need additional data about financial market transactions to craft effective rules. OFR has the ability to require companies to provide that data and to share it with those regulators.
- **Increase funding and staffing at OFR**. Reverse Trump-era reductions and increase funding above Obama-era levels. OFR is funded via the Financial Research Fund, not general appropriations, so its funding can be increased without Congressional action.

Treasury - IRS

Change the tax code and reinvigorate the IRS to focus on making the wealthy pay their fair share and reducing incentives for financial engineering

- **Increase IRS enforcement** against the super-wealthy and large corporations. Select audit targets based on proportion of income earned (all income, not just taxable). Reduce the focus on EITC and other low-income taxpayer issues and increase funding for enforcement litigation.

Rein in abuses that permit private funds to evade regulation and engage in predatory activities

- **Eliminate loopholes** that private equity funds take advantage of to avoid paying taxes on the abusive fees that they charge to portfolio companies
    - Clarify when purported monitoring fees paid by the portfolio company should be recharacterized as non-deductible dividends (to which dividend withholding will apply with respect to the private equity fund's foreign investors).

    - Finalize the proposed regulations that clarify when management fees waived in exchange for a larger share of profits are taxed as ordinary income rather than as capital gains.
- **Improve tax enforcement** against private equity tactics that are already illegal under US tax law.
    - Devote additional IRS enforcement resources to audits of PE funds, asset managers and PE portfolio companies, instead of auditing use of tax credits by low-income workers.
    - Audit management fee waiver structures to determine whether they will be respected or instead recharacterized as disguised fees.
    - Audit monitoring fee structures to determine whether they will be respected or are instead used to hide non-deductible dividends.
    - Enforce new statutory requirement that an asset be held for three years in order to receive carried interest treatment. Increased audits and enforcement of this requirement to remedy the current lack of compliance.

Federal Banking Regulators

Limit the power and size of the largest banks and the risk they pose to the economy

- **Pause outstanding disbursals of bank dividends and review stress test results as part of broader review of all outstanding agency action**
    - The stress testing process has been greatly weakened over the years and effectively gutted by the Trump Administration. The incoming administration should ensure stress test results accurately incorporate key assumptions about capital and balance sheet outcomes during recession and have been gamed to hide weaknesses in the balance sheets.
- **Increase the rigor of stress test modeling, oversight, and assumptions for the next stress test cycle.** Integrate risks related to inequality, racial injustice and climate change into stress test modeling. To ensure that banks cannot game the models used by regulators to hide weaknesses in their balance sheets, do not disclose changes to specifics of stress testing in advance.
- **Require all banks participating in COVID facilities to cease paying dividends.** Bank balance sheets are being propped up by their participation in taxpayer funded programs. Such continued
- **Restore vigorous bank supervision.** Affirm intent to restore the capacity and authority of bank supervisors to properly oversee and, if necessary, demand change in

irresponsible bank practices, a tool which has been seriously weakened under the Trump Administration.

  - Strengthen internal processes that incentivize supervisory staff to identify and demand changes in irresponsible bank practices.
  - Reinstate withdrawn interagency guidance on leveraged lending markets.

<u>Limit the ability of banks to make hedge-fund like trades and investments in capital markets and strengthen the division between banking and capital markets.</u>

- **Improve disclosures on Volcker compliance from regulators and banks.** There is almost no data available on bank trading and covered funds activity that would make it possible to understand how or whether the Volcker Rule is enforced. Regulators and banks should provide public data listing the individual trading desks at major banks, including the types of instruments traded, the aggregate inventories at the desk level, and how Volcker trading limits are set. There should also be a breakout of types of external funds held by these banks. This will help the public, regulators, markets, and legislators better understand trading patterns and Volcker Rule compliance.
- **Increase enforcement against bank trading that runs afoul of Volcker restrictions**. While Volcker is not strong enough, it is also not being properly enforced in its weakened form. Federal banking regulators should ensure that all banks are in compliance with current rules, even as they work to strengthen the Volcker restrictions.
- **Actively monitor the effectiveness of the Volcker rule**. The FSOC must be ready to suggest and drive additional rounds of changes, with the understanding that it may take several iterations to reach a rule that provides clear guidance and eliminates the activity that Congress put the Volcker rule in place to stop.

<u>OCC and FDIC</u>

<u>Address the regulatory arbitrage employed by non-banks such as high cost lenders and fintechs providing financial services while avoiding the laws designed to protect the public</u>

- **Impose a moratorium on new Industrial Loan Corporation (ILC) charters.** Until recommended legislation is passed to close the loophole, nonbanks can use this charter to own a bank while evading systemic supervision by the Fed and avoiding state usury laws. The FDIC should not grant any further charters.
- **Halt plans for a payment charter that would allow nonbanks to take deposits without offering deposit insurance.** The OCC should not offer any of the privileges of a bank charter to nonbanks not subject to prudential regulation.
- **Freeze all pending charters slated to be issued to companies that will not be subject to the requirements and limits of the banking business**. Providing banking charters to high

cost lenders and fintechs allows them to take advantage of a number of legal benefits without the safeguards and limits inherent in banking. Such a freeze should be a prelude to a policy of not issuing any further charters.

- **Reverse the OCC and FDIC's "Madden-fix" rules (the Valid-When-Made Rule, the True Lender Rule and the Federal Interest Rate Authority Rule)**, which allow banks, not subject to state interest rate caps, to serve as a pass-through for loans effectively made by non-bank lenders. Reversing these rules will limit the ability of debt collectors, high-cost lenders and others to engage in abusive or usurious practices without state oversight.
- **Strengthen enforcement of existing limits on unfair and abusive practices against banks and non-banks profiting from OCC and FDIC granted charters.** Banks are granted exemptions from state law based in part on the presumption that they are heavily federally regulated. The OCC and FDIC should fulfill their responsibility to ensure that anyone benefiting from a banking charter complies with all regulations.

Securities and Exchange Commission

<u>Stop both private equity funds and hedge funds from preying on pension funds and jeopardizing the retirement of ordinary Americans</u>

- **Convene a diverse set of stakeholders from all parts of the economy in a roundtable to advise on the issues arising from the growth in private funds and suggest courses of action.** The roundtable should focus on actions that help ensure transparency and consider the interests of all stakeholders including workers, investors and communities. Specific policies include a move towards standardized and expanded disclosures, investor protections, and the impacts of investments on the broader economy.
- **Meaningfully enforce disclosure requirements for advisors to limited partners and ensure that those disclosures accurately reflect:**
    - Propriety of fees and expenses charged by hedge funds and private equity funds to their pension fund clients, including both amount and structure of fees.
    - Adequacy of disclosures of fee monitoring or misallocation of fees by private equity managers.
    - Accuracy of claimed returns relative to Generally Accepted Accounting Principles (GAAP).
- **Enforce existing reporting requirements on reporting Forms PF and ADV** to help the SEC better gather and disseminate the data captured on those forms, allowing it to:
    - **Improve disclosure of granular Form PF data to other FSOC regulators** for use in monitoring systemic risk.
    - **Disclose aggregate results of these reviews** publicly and on a regular basis

- **Step up enforcement against private funds that violate existing rules** regarding fees and or reporting of fees or returns. Many funds flout the existing inadequate requirements, providing misleading disclosures of returns and charging abusive fees. The SEC should ensure that funds comply with current law, even as it develops strengthened rules.
- **Announce a request for information on updates to disclosure regulations**. Ask about the impacts of a requirement to use fair value accounting to disclosure assets under management, standardization of fee disclosures in line with what mutual funds must do, and clearer disclosure of hidden fees, conflicts of interest and true risk and liquidity adjusted returns.
- **Prohibit fiduciary duty waivers** by limited partners in a PE or hedge fund as violation of a fund general partner's responsibility. In addition, consider treating agreements by pension funds or others agreeing to waive fiduciary duty as a violation of the plan sponsor's own fiduciary duty.
- **Request information on increasing frequency of hedge fund position reporting in controlling situations**, to understand mechanisms and challenges to:
  - Increasing frequency of reporting of positions, shorten the lag at which positions are reported, and expand which securities must be listed on reporting Form 13F.
  - Adding acquisition of options to the kinds of positions that must be disclosed on Forms 13D and 13F

<u>Improve the regulation of mutual funds, money market funds and other registered investment companies to ensure that their growth does not put either individual investors' retirement or the broader economy at risk</u>

- **Update the Exchange Traded Fund (ETF) rule to reverse the waiver of the requirement that new ETFs seek an exemptive order if they meet certain criteria.** This provision prevents appropriate review, comment and consideration of complex ETFs or those that pose significant risks to investors.

<u>Limiting the risks posed to the economy by under-regulated corporate debt funds and markets</u>

- **Begin a focused effort to evaluate integrity of practices for rating corporate debt (including securitized vehicles) at National Recognized Statistical Ratings Organizations (NRSROs)**. Given record levels of corporate leverage and rapid increase in high-risk corporate debt, the Office of Credit Rating should prioritize identifying any breakdowns early to help avoid the build up of systemic risk that debt rating practices supported in 2008.
- **Examine liquidity risk management and holdings of potentially illiquid or insufficiently diversified assets at mutual funds** with significant investments in corporate debt

instruments. The SEC must ensure that they can properly manage redemption demands in stress markets without creating systemic stress.

<u>Reverse deregulation that undermines public markets and allows use of opaque private markets to avoid scrutiny and investor protections</u>

- **Call for delay and then cancellation of the "Harmonization" rules changes** recently adopted by the SEC. These rules make it easier for private companies to string together a series of exempt offerings to avoid registration requirements, expand their ability to conduct general solicitations, and raise the offering limits for several exemptions. The rules circumvent Congressionally created public securities law and further expand private markets at public markets' expense.
- **Withdraw the "Finders" exemptive order** that exempts individuals from broker registration requirements where their broker-like activities are related to a private offering. Given the expansion of private offerings, the protections provided by broker registration are crucial for protecting investors.
- **Conduct a study on the usage of, effects of, and fraud in private offering exemptions** before exemptions can be further loosened. Based on the findings of the study, consider proposals to narrow the existing exemptions.
- **Increase investor access to information by updating the regulatory definition of "holder of record"** so that the number of beneficial owners is used to calculate the thresholds for when companies are subject to public company reporting. The erosion in this threshold as ownership is increasingly concentrated in institutional investors has been a significant factor in the ability of multi-billion-dollar companies to remain private.
- **Enhance reporting obligations for use of transaction exemptions** to improve disclosures in private markets and strengthen penalties for failure to report. This will make larger companies who issue in private markets disclose more information.
- **Expand mandatory trade execution reporting to private placement offerings covered by Rule 144A and Regulation D.**

<u>Reset the rules of the public markets so that they facilitate productive investment in the real economy and that businesses are sustainable and serve the interests of all stakeholders</u>

- **Protect shareholder voice in governance** by rolling back Trump regulations limiting resubmission of shareholder proposals. Shareholder views on ESG issues are a crucial conduit for long-term investors to influence policy.
- **Strengthen the SEC whistleblower program** by fully protecting whistleblower identities and reducing hurdles to providing whistleblower information. Roll back SEC rule limiting whistleblower protections.

Protect individual investors in financial markets by making sure that they can choose safe, sustainable investments based on advice that is truly in their best interests.

- **Launch a study of financial advisor practices** to lay the groundwork for an improved "best interest" standard rule that supercedes the SEC's current Regulation "Best Interest." The study should identify ways to make sure that advisors recommend investments and investment strategies that are the best match for investors, and avoid compensation structures that incentivize advice that is not in the investor's best interest.

Improve regulation of derivatives markets by limiting speculation, ensuring transparency, and controlling the systemic risk that these markets pose to the stability of the broader financial system

- **Roll back SEC rules that basically exempt cross-border transactions in security based swaps from U.S. regulation.** Both the SEC and CFTC must substantially improve their regime for oversight of cross-border swaps.

Improve the functioning of regulatory agencies by ensuring they are adequately funded and increasing Congressional oversight to monitor their performance and ensure they are pursuing their mandates

- **Stop waiving bad actor bars and other legal penalties** after findings of wrongdoing that would, without the waiver, prevent companies from participating in certain markets, taking advantage of certain regulatory waivers, or providing investment advisory services for some funds.

Commodities Futures Trading Commission

Improve regulation of derivatives markets by limiting speculation, ensuring transparency, and controlling the systemic risk that these markets pose to the stability of the broader financial system

- Reopen investigation into manipulation of the WTI futures contract, as the recent CFTC report was not effective in determining needed reforms.
- Begin focused effort to perform monitoring and surveillance on cross-border derivatives transactions and potential efforts to use loopholes in cross-border regulations and inter-affiliate margin rules to evade derivatives safeguards.
- Reach out to FSOC, the Federal Reserve, and banking regulators to begin interagency examination of strengthening the resiliency of derivatives clearing houses.

- Investigate the scope of exemptions from trade execution requirements at derivatives trading venues and whether these exemptions are unnecessarily damaging price transparency in the derivatives markets.

<u>Improve the functioning of regulatory agencies by ensuring they are adequately funded and increasing Congressional oversight to monitor their performance and ensure they are pursuing their mandates</u>

- **Stop waiving bad actor bars and other legal penalties** after findings of wrongdoing that would, without the waiver, prevent companies from participating in certain markets, taking advantage of certain regulatory waivers, or providing investment advisory services for some funds.
- Assess CFTC funding needs in the light of enforcement and data analysis priorities and make the argument to Congress for increased funding.

Department of Labor

<u>Stop both private equity funds and hedge funds from preying on pension funds and jeopardizing the retirement of ordinary Americans</u>

- **Prohibit 401(k) plans and other defined contribution plans from offering private equity investments**. Withdraw the information letter permitting plan fiduciaries to include private equity investment options.

<u>Reset the rules of the public markets so that they facilitate productive investment in the real economy and that businesses are sustainable and serve the interests of all stakeholders</u>

- **Issue a bulletin clarifying that ESG factors are pecuniary for purposes of the DOL's financial factors rule in determining fund investments rule.** The rule instructs funds that they must take pecuniary factors into account, but does not define what constitutes pecuniary. The DOL can clarify that considering ESG factors is pecuniary due to their impact on long-term returns.
- **Issue a request for information on sustainable investment policies.** In anticipation of a developing a rule requiring every fund to have a sustainable investment policy, the DOL should gather information on what such a sustainable investment policy should include.
- If finalized, **delay and roll back proposed DOL rules governing proxy voting by ERISA plans** that undermine ESG integration

<u>Protect individual investors in financial markets by making sure that they can choose safe, sustainable investments based on advice that is truly in their best interests.</u>

- If finalized, **delay and roll back proposed DOL rules that would ease restrictions on financial advisors** and allow advisors to receive compensation for providing "conflicted" investment advice.

Federal Trade Commission

Reining in abuses that permit private funds to evade regulation and engage in predatory activities

- **Increase the FTC's scrutiny of private equity rollups**:
    - Broaden Hart-Scott-Rodino Act coverage by rolling back existing regulatory exemptions and expanding definition of control beyond just equity ownership to require reporting on other control arrangements (e.g., via financing agreements).
    - Immediately conduct a study of the 9 most active PE firms doing acquisitions in healthcare, real estate and other high-risk spaces to understand the impact of rollups
    - Prepare a broader study of PE rollups and their impact at the national, regional, and local level. Require the study to make a recommendation for FTC and Congressional action on limiting the harmful effects of rollups on communities.

Department of Justice

Limit the power and size of the largest banks and the risk they pose to the economy

- **Increase scrutiny and retrospective review of bank mergers.** The DOJ should review its record of rubber-stamping bank mega-mergers and seriously assess whether the biggest banks need to be broken up to lower costs, improve service, and safeguard the financial system. The shortcomings of the current bank merger review process have failed to protect the public from mega-banks imposing higher costs on consumers, reducing the volume or quality of banking services, or to prevent the biggest banks from becoming so large that they pose a risk to the entire financial system and real economy. This should also include scrutiny of the CRA implications of these mergers.