FINTECH AND TRUMP TECH: HOW THE NEW ADMINISTRATION IS SHAPING THE TECHNOLOGY WORLD DEMANDS

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President Donald Trump's first hundred days in office were characterized by a whirlwind of executive actions and attempts to fulfill campaign promises. Yet the technology sector's primary concern has been Trump's lack of regulatory action and unknown policies. How this administration will impact emerging technologies like fintech is still relatively uncertain, but an analysis of actions that indirectly affect fintech, the known backgrounds of confirmed and nominated appointees, and influential outside sources promoting fintech agendas may provide insight.

On February 3, 2017, President Trump attempted to roll back parts of the Dodd-Frank Act,[1] the 2010 bill that regulates large swathes of the financial sector.[2] Though the executive order doesn't expressly mention the act, Press Secretary Sean Spicer made the intentions of the order clear in a press briefing given the same day the order was signed.[3] The order calls for the review of all financial regulations for compliance with six "Core Principles," which include preventing taxpayer-funded bailouts and enabling American firms to be competitive with foreign companies as well as domestic and foreign markets.[4]

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[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

[2] Issie Lapowsky, *Trump's Gifts to Wall Street Threaten Retirees—and Robots*, WIRED (Feb. 3, 2017, 5:56 PM), https://www.wired.com/2017/02/trumps-gifts-wall-street-threaten-retirees-robots/ [https://perma.cc/7NQ4-UFVD]; *see* Dodd-Frank Wall Street Reform and Consumer Protection Act.

[3] Carmen Germaine, *CORRECTED: Trump Orders Review Of Dodd-Frank And Fiduciary Rule*, LAW360 (Feb. 3, 2017 12:45 PM), https://www.law360.com/capitalmarkets/articles/888192/corrected-trump-orders-review-of-dodd-frank-and-fiduciary-rule [https://perma.cc/3DBZ-UNL5].

[4] Exec. Order No. 13,772, 82 Fed. Reg. 9,965 (Feb. 3, 2017).

Thought to be a defining part of President Obama's legacy,[5] the Dodd-Frank Act was a legislative reaction in 2010 to the financial crisis of 2008. In the technology sector, entrepreneurs reacted to the crisis in a different way: by creating programs and algorithms to bring increased transparency and automation to much of the traditional Wall Street practice.[6] Companies like Betterment[7] and Wealthfront[8] put consumers back in the pilot seat of their own finances, curtailing potential conflicts of interest or temptations to breach fiduciary duties.[9]

However, President Trump also issued a memo directing the Department of Labor to consider rescinding its rule imposing a fiduciary duty on financial advisors for retirement accounts.[10] Fintech companies originally responded to this rule by creating robo-advisors, as it was believed that the compliance costs for money managers would disincentivize retaining smaller clients.[11] The White House's orders could remove this incentive and stifle fintech growth in this area.

In this regard, President Trump's stance on reduced federal regulation runs counter to leaders of fintech, many of whom have advocated for fintech-specific regulations as a means of spurring growth via more coherent

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[5] Fred Barbash & Renae Merie, *Trump to order regulatory rollback Friday for finance industry starting with Dodd-Frank*, WASH. POST (Feb. 3, 2017), https://www.washingtonpost.com/news/morning-mix/wp/2017/02/03/trump-to-order-rollback-friday-of-regulations-aimed-at-finance-industry-top-aide-says/?utm_term=.d626e50a6e13 [https://perma.cc/8FXS-PW4C].

[6] Nadine Bonner, *Fintech Meets Tradition: JPMorgan & OnDeck Team Up to Create a New Lending Product*, ABF JOURNAL (Mar. 2016), http://www.abfjournal.com/%3Fpost_type%3Darticles%26p%3D45915 [https://perma.cc/33VR-8TGM].

[7] *Our Story /Vertical Integration: Better Business, Better Returns*, BETTERMENT (Mar. 13, 2014), https://www.betterment.com/resources/inside-betterment/our-story/vertical-integration-better-business-better-returns/ [https://perma.cc/76A3-6BJ7].

[8] *Works Non Stop*, WEALTHFRONT (last visited Feb. 27, 2017), https://www.wealthfront.com/works-non-stop [https://perma.cc/BM6R-3X2F].

[9] Betterment's vertical integration structure combined traditionally separate steps like financial advice and trading, meaning consumer have access to a virtual one-stop-shop style investment vehicle. Similarly, Wealthfront has automated the process of investing and given consumers access to their portfolio via mobile interfaces that can be accessed at any time.

[10] Memorandum on the Fiduciary Duty Rule, 2017 Daily Comp. Pres. Doc., 00095 (Feb. 3, 2017).

[11] *Id.*

compliance programs.[12] The President has also suggested the abolition of one of the most recently established executive agencies, the Consumer Finance Protection Bureau.[13] The CFPB, a pro-fintech agency, was created by Dodd-Frank[14] with a single goal: "watching out for American consumers in the market for consumer financial products and services."[15]

The CFPB has supported the growth of fintech companies, encouraging what it calls "consumer-friendly innovation."[16] A full repeal of Dodd-Frank could spell the end of the CFPB, which may lead to a host of consumer finance issues related to fintech.[17] According to Nilesh Vaidya, senior vice president and head banking and capital markets for Capgemini Financial Services, the end of the CFPB could cause "a rise in mortgages being written which are not really affordable to consumers . . . the likelihood for delinquencies would increase."[18]

The CFPB has also shut down fintech companies that do not promote consumer welfare, which are companies that are acting essentially as new age payday lenders.[19] Continuing to balance support for and enforcement of fintech requires skilled and knowledgeable agencies, like those found at CFPB, but even if Dodd-Franks stays, legislation introduced in both the House and Senate on February 14, 2017 call for the repeal of the agency.[20]

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[12] *Here's what a Trump presidency means for US FinTech,* BUS. INSIDER (Nov. 9, 2016, 10:15 AM), http://www.businessinsider.com/heres-what-a-trump-presidency-means-for-us-FinTech-2016-11 [https://perma.cc/8EC5-4DZB].

[13] *Id.*

[14] Consumer Financial Protection Act of 2010, 12 U.S.C. § 5491 (2017).

[15] *Creating the Consumer Bureau*, CONSUMER FIN. PROT. BUREAU (last visited Mar. 30, 2017), https://www.consumerfinance.gov/the-bureau/creatingthebureau/ [https://perma.cc/9L6Z-EYBQ].

[16] CONSUMER FIN. PROT. BUREAU, PROJECT CATALYST REPORT: PROMOTING CONSUMER-FRIENDLY INNOVATION, INNOVATION INSIGHTS (Oct. 2016), https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/102016_cfpb_Project_Catalyst_Report.pdf [https://perma.cc/3K47-TH29].

[17] John Divine, *What Would Repealing Dodd-Frank Mean for Stocks?*, U.S. NEWS & WORLD REPORT (Feb. 6, 2017) http://money.usnews.com/investing/articles/2017-02-06/trumps-executive-orders-what-would-repealing-dodd-frank-mean-for-stocks [https://perma.cc/749E-XDWU].

[18] *Id.*

[19] Danny Vinik, *Can Washington Control High-Tech Lending?*, POLITICO: THE AGENDA (Sep. 28, 2016 4:57 AM), http://www.politico.com/agenda/story/2016/09/online-payday-lender-regulations-000206 [https://perma.cc/KZ5X-ZZAY].

[20] H.R. 1031, 115th Cong. (1st Sess. 2017). H.R. 1031 is entitled "To eliminate the Bureau of Consumer Financial Protection by repealing title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Consumer Financial Protection Act of

President Trump will likely face serious opposition from Democrats and their supporters[21] on these actions affecting fintech, so instead of focusing on these moves directly, scrutinizing Trump's appointees offers another approach to understanding this administration's impact on fintech.

Trump is expected to name former Texas Congressman Randy Neugebauer to replace the director of the CFPB.[22] Representative Neugebauer has been a vocal critic of the CFPB. He has called for fewer regulations and attempted to replace the director position with a multi-member commission, which would limit the organization's ability to independently draft regulations.[23]

The fight over the head of the CFPB could last through next year, as current Director Richard Cordray's term extends to 2018.[24] Though the D.C. Court of Appeals ruled that the CFPB head can be removed at will rather than the for-cause standard typically used at independent agencies[25]—which could also seriously curtail regulation in opposition to White House policies—that decision was vacated and an *en banc* hearing will be heard on May 24, 2017.[26] Given that President Trump has already fired officials who disagree with him[27] and attempted to wipe clean Obama appointments at DOJ[28], Director

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2010." S. 370, 115th Cong. (1st Sess. 2017). S. 370 is entitled "A bill to eliminate the Bureau of Consumer Financial Protection by repealing title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Consumer Financial Protection Act of 2010.

[21] Alan Rappeport, *Steven Mnuchin Is Confirmed as Treasury Secretary*, N.Y. TIMES, (Feb. 13, 2017), https://www.nytimes.com/2017/02/13/us/politics/steven-mnuchin-confirmed-treasury-secretary.html?_r=0 [https://perma.cc/VP36-FH9P].

[22] Megan Leonhardt, *Trump May Tap Consumer Watchdog's Biggest Opponent to Run It*, TIME (Jan.13, 2017), http://time.com/money/4634976/donald-trump-cfpb-richard-cordray-randy-neugebauer/ [https://perma.cc/PWR8-XEQN].

[23] *Id.*

[24] C. Ryan Barber, *CFPB Wins New Chance to Defend Single-Director Power Structure*, NAT'L L. J. (Feb. 16, 2017 7:55 PM), http://www.nationallawjournal.com/legaltimes/home/id=1202779317283/CFPB-Wins-New-Chance-to-Defend-SingleDirector-Power-Structure?mcode=1383176848142&curindex=0&slreturn=20170117171507 [https://perma.cc/2LHV-B7FU].

[25] "With the for-cause provision severed, the President now will have the power to remove the Director at will, and to supervise and direct the Director." PHH Corp. v. Consumer Fin. Prot. Bureau, 839 F.3d 1, 8 (D.C. Cir. 2016), *reh'g en banc granted, order vacated* (Feb. 16, 2017).

[26] Order Granting Rehearing En Banc, 839 F.3d 1, 8 (D.C. Cir. 2016).

[27] Brian Fallon, *Why Trump's Firing of Sally Yates Should Worry You*, POLITICO MAG. (Jan. 31, 2017), http://www.politico.com/magazine/story/2017/01/trump-firing-sally-yates-should-worry-214716 [https://perma.cc/5R4U-2QPK].

Cordray may be dependent on legal relief to retain his position through his appointed term.

President Trump's Secretary of Commerce Wilbur Ross may also shed light on how this administration plans to deal with fintech and traditional banking institutions.[29] Ross, an investor and banker, targeted failing banks during the financial crisis of the 2000s.[30] In 2011, at the height of the European debt crisis, Ross was part of a group of investors that acquired 35% of the Bank of Ireland.[31] While traditional banks themselves are seeking ways to improve services through many of the same processes employed by independent fintech companies—such as mobile interactions[32]—many fintech companies view themselves as disruptors of the industry.[33] There is real tension between these old titans and the newer, scrappier service providers that Commerce is expected to mediate.[34] Though Ross sold his interests in the Bank of Ireland in 2014, his former involvement may create conflicts of interest that influence his actions at Commerce.[35]

Steven T. Mnuchin, President Trump's Treasury Secretary, is yet another veteran banker and a former Goldman Sachs employee.[36] Mnuchin put himself at odds with many popular views on automation and technology in a March interview when he said artificial intelligence is "50-100 years away"

[28] Charlie Savage & Maggie Haberman, *Trump Abruptly Orders 46 Obama-Era Prosecutors to Resign*, N. Y. TIMES (Mar. 10, 2017), https://www.nytimes.com/2017/03/10/us/politics/us-attorney-justice-department-trump.html?em_pos=large&emc=edit_dk_20170310&nl=dealbook&nlid=78586497&ref=headline&te=1 [https://perma.cc/KX26-4NPW].

[29] Chase Peterson-Withorn, *What You Need To Know About Commerce Secretary Pick Wilbur Ross, Trump's Billionaire Pal*, FORBES (Nov. 29, 2016, 11:45 PM), http://www.forbes.com/sites/chasewithorn/2016/11/29/what-you-need-to-know-about-likely-commerce-secretary-wilbur-ross-trumps-billionaire-pal/#58c1ca198d60 [https://perma.cc/P9Z9-X75Y].

[30] *Id.*

[31] *Id.*

[32] Brian Peters, *Mobile Financial technology can level the playing Field for underserved consumers*, THE HILL (Oct. 17, 2016 12:50 PM), http://thehill.com/blogs/congress-blog/technology/301274-mobile-financial-technology-can-level-the-playing-field-for [https://perma.cc/9L5H-9RS8].

[33] *Id.*

[34] *Policy Issues: Trust and Safety in Financial Services*, FIN. INNOVATION NOW (last visited Mar. 30, 2017), https://financialinnovationnow.org/issues/ [https://perma.cc/FW22-ZMQC].

[35] *Id.*

[36] *Id.*

from supplanting human jobs.[37] That position was criticized by several new outlets, all of which agree that AI is currently impacting American job loss[38]—one paper even pointed that 47 percent of the total U.S. employment could be automated in the next two decades. Secretary Mnuchin's comments can impact tech stock valuations,[39] meaning assertions like the one on AI could affect fintech companies' ability to continue to find funding or support.

In his new role, Secretary Mnuchin will assist President Trump in matters ranging from financial regulation to revamping the tax code. However, the two men are sending mixed messages on tax reform: Mnuchin has stated that "there would be no absolute tax cut for the upper class" in stark contrast to President Trump's adopted position.[40]

President Trump's potential tax plans have fintech companies feeling skittish. Much of the White House's current plan regarding tax reform focuses on corporate taxation without addressing individual tax concerns.[41] While this will likely benefit the larger, established corporations, many emerging fintech start-ups are structured for pass-through taxation, meaning the individual owners shoulder the gains or losses rather than the company itself.[42] Without reforming individual tax regulations, these start-ups may find themselves at an extreme disadvantage when competing with traditional institutions.[43] Nevertheless, some think tanks argue that even small businesses will benefit from corporate tax reform, painting start-ups as holding up beneficial changes

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[37] Shannon Vavra, *Mnuchin: Losing human jobs to AI "not even on our radar screen*, AXIOS (Mar. 24, 2017), https://www.axios.com/treasury-secretary-mnuchin-interviews-with-axios-live-updates-2327865447.html [https://perma.cc/P6P2-3R2Z].

[38] Elena Holodny, *Treasury Secretary Mnuchin says AI taking US jobs is '50-100 more years' away — but it's already beginning to happen*, BUS. INSIDER (Mar. 26, 2017 6:15 A.M.), http://www.businessinsider.com/the-robots-are-coming-whether-mnuchin-says-so-or-not-2017-3 [https://perma.cc/8KM3-XDVN]; Lawrence H. Summers, *Larry Summers: The robots are coming, whether Trump's Treasury secretary admits it or not*, WASH. POST (Mar. 27, 2017 9:02 AM) https://www.washingtonpost.com/news/wonk/wp/2017/03/27/larry-summers-mnuchins-take-on-artificial-intelligence-is-not-defensible/?tid=sm_tw&utm_term=.878fab6b4d0c [https://perma.cc/3GEB-K64U].

[39] Summers, *supra* note 38.

[40] Patricia Cohen, *Treasury Nominee Vows No Tax Cut for Rich. Math Says the Opposite*, N. Y. TIMES (Feb. 9, 2017), https://www.nytimes.com/2017/02/09/business/economy/mnuchin-rule-tax-cut.html [https://perma.cc/SAV3-LQYY].

[41] Joyce Hanson, *FinTech Firms Worry Trump Tax Plan Will Leave Them Behind*, LAW360 (Jan. 9, 2017, 5:05 PM), https://www.law360.com/articles/878795/FinTech-firms-worry-trump-tax-plan-will-leave-them-behind [https://perma.cc/XX9M-Y4TL].

[42] *Id.*

[43] *Id.*

in exchange for special treatment. As this tension builds, new and fragile technology sectors are watching every move closely.[44]

If President Trump fails to take a concrete position on fintech, state governments may enter the regulatory sphere. In New York state, where fintech has been growing rapidly and seems to be the current home of the sector,[45] top financial regulator Maria Vullo has demanded that the federal Office of the Comptroller of the Currency not interfere with the state's plan to regulate fintech and that federal oversight would allow circumvention of state consumer protection laws, as well as potentially creating another "too big to fail" class of institutions.[46]

This action by the OCC is actually a holdover from the Obama White House, when the OCC announced desires to grant fintech companies national banking licenses.[47]A federal charter could allow disruptive companies to more easily anticipate regulations and implement uniform policies compliant with federal oversight, as opposed to a patchwork of state and local legislatures.[48] Seemingly ignoring New York's position, in March the OCC rolled out its licensing manual for fintech companies to apply for a charter.[49]

Reacting to the White House's ambiguous stance on fintech, private organizations are currently attempting to give suggestions on how the White House can deal with fintech to the benefit of all.

Tech giants Google, Apple, Amazon, PayPal and others formed Financial Innovation Now and sent a letter to President Trump laying out a series of recommendations, including creating and appointing a Treasury Undersecretary for Technology who would work with other federal financial

[44] *Id.*
[45] Aaron Elstein, *Cuomo fights Trump over the future of FinTech*, CRAIN'S N. Y. BUS. (Jan. 25, 2017, 3:30 PM), http://www.crainsnewyork.com/article/20170125/FINANCE/170129911/andrew-cuomo-fights-donald-trump-over-the-future-of-FinTech [https://perma.cc/K89F-KWVL].
[46] *Id.*
[47] *The OCC Wants Online Lenders to Become Limited Purpose Banks*, DEBANKED (Dec. 2, 2016), http://debanked.com/2016/12/the-occ-wants-online-lenders-to-become-limited-purpose-banks/ [https://perma.cc/T5EK-LFK5].
[48] Ben Turner, *Back to the future: Congress should look to past for Fintech going forward*, THE HILL (Feb. 24, 2017 7:00 AM), http://thehill.com/blogs/congress-blog/technology/320935-back-to-the-future-congress-should-look-to-past-for-fintech [https://perma.cc/5RH4-Q88F].
[49] OFFICE OF THE COMPTROLLER OF THE CURRENCY, EVALUATING CHARTER APPLICATIONS FROM FINANCIAL TECHNOLOGY COMPANIES (Mar. 2017).

regulators and the banking sector to foster fintech.[50] Another group, Consumer Financial Data Rights Group, acting as a self-styled trade organization on behalf of fintech companies, strives to improve consumer access to financial data.[51]

The National Economic Council released a report in early January 2017 titled "A Framework for FinTech."[52] The report, which could be considered a final piece of advice on fintech from President Obama, lays out suggested policy objectives for financial services, from positive innovation to national competiveness.[53] In addition, the report includes ten statements of principals, designed to provide a framework to contribute to the policy objectives.

However, Trump has tapped former Goldman Sachs president Gary Cohn as the new head of the NEC. The senior economic advisor's comments seem indicative of a deregulatory stance,[54] in line with President Trump's supposed positions. Mr. Cohn has been highly influential at the White House since the beginning of the new administration.[55] President Trump has even included Cohn as a founding member of the newly minted Office of American Innovation.[56] The new office aims to bring private sector efficiencies into government agencies.[57]

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[50] Rob Haralson, *FIN calls on President-elect Trump to promote innovation in financial services, appoint senior financial technology leader*, FIN. INNOVATION NOW (Nov. 30, 2016), https://financialinnovationnow.org/2016/11/30/fin-trump-transition-letter/ [https://perma.cc/Y5QE-8KCQ].

[51] Samantha Hurst, *Consumer Financial Data Rights Group Formed by Fintech Companies including Kabbage, Affirm & More*, CROWDFUND INSIDER (Jan. 20, 2017), https://www.crowdfundinsider.com/2017/01/94995-envestnet-yodlee-partners-various-fintech-firms-establish-consumer-financial-data-rights-group/ [https://perma.cc/C8CZ-W5M4].

[52] NAT'L ECON. COUNCIL, A FRAMEWORK FOR FINTECH (Jan. 2017).

[53] *Id.*

[54] Ryan Tracy, *Gary Cohn's Vision for a Regulatory Rethink*, WALL ST. J. (Feb. 3, 2017 7:52 AM), https://www.wsj.com/articles/white-house-plans-broad-rethink-on-regulating-big-financial-firms-1486116003 [https://perma.cc/CW3G-Z29M].

[55] Michael C. Bender, Damian Paletta, & Nick Timiraos, *Gary Cohn Has Emerged as an Economic-Policy Powerhouse in Trump Administration*, WALL ST. J. (Feb. 11, 2017 3:05 PM), https://www.wsj.com/articles/gary-cohn-has-emerged-as-an-economic-policy-powerhouse-in-trump-administration-1486843544 [https://perma.cc/DKY3-K9CR].

[56] Memorandum from the White House Office of the Press Sec'y on the White House Office of American Innovation, (Mar. 27, 2017), https://www.whitehouse.gov/the-press-office/2017/03/27/presidential-memorandum-white-house-office-american-innovation [https://perma.cc/3SK3-F3MJ].

[57] *Id.*

Cohn's clout may have taken a hit during the recent failure to pass the Republican-backed repeal of the Affordable Care Act. Cohn was at the front of the charge to push the Congressional bill by bringing his economic expertise into the conversation through meetings with Republican leaders.[58] When the bill failed to pass, sources in the know claim Cohn shouldered a portion of the blame.[59] How Cohn's NEC could affect fintech has become even harder to predict.

The whirlwind of information and actions facing fintech growth is creating a situation wrought with uncertainty and competition for control. Despite independent action from federal regulatory agencies, state organization, or private tech groups, Trump's administration could change the rules of the game overnight with certain proposed or potentially proposed actions. Fintech companies are trying to get ahead of the chaos, but are watching the White House closely to gauge the winds. If 2016 was a year of fintech expansion, 2017 and beyond could see a slow-down unless clear guidance emerges.

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[58] Bob Bryan, *The former Goldman Sachs executive running Trump's economic team is also playing a big role in the repeal of Obamacare*, BUS. INSIDER (Feb. 13, 2017 12:49 PM), http://www.businessinsider.com/trump-economic-advisor-gary-cohn-working-on-aca-obamacare-repeal-2017-2 [https://perma.cc/M3ZH-UR2R].

[59] Maggie Haberman (@maggieNYT), TWITTER (Mar. 23, 2017, 9:10 PM), https://twitter.com/maggieNYT/status/845110597339529217 [https://perma.cc/V3F2-GCSS] ("COHN, tasked with portions of the bill early on, grew to see it as a bad product to sell."); Maggie Haberman (@maggieNYT), TWITTER (Mar. 26, 2017, 8:04 AM), https://twitter.com/maggieNYT/status/845999880531333120 [https://perma.cc/YW8S-GGQG] ("To say the knives are out for Cohn, across multiple layers in West Wing and outside it, is understatement.").