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Elections 2016: What does it mean for Advisors and the Fiduciary Standard?

October 31, 2016

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Topics

- Trump, Clinton campaign platforms
 - Financial services regulation
 - SEC
 - DOL
 - Taxes
 - Income tax
 - Estate tax
 - Other
- Post-election scenarios

Note: CE credits unavailable for this presentation

How do they invest?

- Donald Trump*
 - Holdings
 - Biggest bet: Blackrock's Obsidian hedge fund \$25-50 m.
 - Charges 1% fee, 20% of returns
 - Paulson & Co. hedge funds
 - \$1-5 m. in each fund
 - Baron Capital Management
 - 11 mutual funds, \$100k-\$5 m. total
- Hillary and Bill Clinton
 - Holdings
 - Top holding: Vanguard 500 Index Fund \$5-25 m.
 - Charges .05% fee
 - Remainder in cash, insurance policies

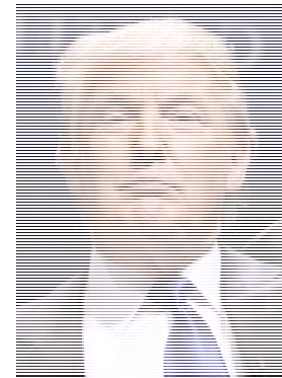


* Source: Bloomberg

Financial Services Regulation



- Trump as president would
 - ‘Cut regulations massively’
 - Repeal Dodd-Frank
 - Moratorium on other new rules
 - Reduce the power of the Federal Reserve
 - No detailed position on retirement savings plans
 - No stated position on DOL, SEC fiduciary initiatives
 - A campaign adviser says the DOL rule should be repealed



“I think there's a great chance to overturn [the DOL rule]” if Mr. Trump is elected president.

-- Rep. Phil Roe, R-Tenn. 6

Trump Statement on Fiduciary Duty



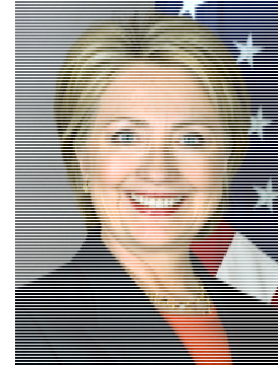
In response to *NY Times* report on potential write-off of \$916 b. in real estate losses:

"Mr. Trump is a highly skilled businessman who has a fiduciary responsibility to his business, his family and his employees to pay no more tax than legally required."

-- Trump campaign statement, Oct. 1, 2016

Financial Services Regulation

- Clinton as president would
 - Defend Dodd-Frank
 - Tax high-frequency trading
 - Strengthen Volcker Rule
 - Shut down banks' ability to invest through hedge funds
 - Strengthen enforcement penalties, SEC & CFTC budgets
 - Enhance disclosure of private equity, hedge funds
 - Defend DOL fiduciary rule
 - No formal position on SEC fiduciary rule
 - No detailed position on retirement savings plans
 - Shore up underfunded MEPs, PBGC



Clinton Statement on Final DOL Rule



"Wall Street shouldn't be allowed to put its own interests before those of American families and their retirement savings. Today's announcement will stop Wall Street from ripping off families, save seniors billions, and help ensure American workers can retire with dignity and security.

As President, I will defend and build on President Obama's financial reforms, and I will work every day to ensure that the financial sector is serving the interests of consumers, retirees, workers and families — not just its own bottom line."

-- Apr. 6, 2016

Does Gridlock Await the SEC?



Mary Jo White, Chair
2013 – 2019



Kara Stein
2013 – 2017



Michael Piwowar
2013 – 2018



Republican
??



Democrat
??

§ 200.41 Quorum of the Commission. A quorum of the Commission shall consist of three members; provided, however, that if the number of Commissioners in office is less than three, a quorum shall consist of the number of members in office; and provided further that on any matter of business as to which the number of members in office, minus the number of members who either have disqualified themselves from consideration of such matter pursuant to §200.60 or are otherwise disqualified from such consideration, is two, two members shall constitute a quorum for purposes of such matter. [60 FR 17202, Apr. 5, 1995 – published in the 4/1/06 CFR.]

SEC Election Turnover



Mary Jo White, Chair
2013 – 2019



Kara Stein
2013 – 2017



Michael Piwowar
2013 – 2018



Republican
??



Democrat
??

“I would appoint tough, independent regulators and ensure that both the Securities and Exchange Commission and the Commodity Futures Trading Commission are independently funded — as other critical regulators are now — so that they can do their jobs without political interference.”

-- Hillary Clinton, NY Times op-ed, Dec. 7, 2015

DOL Turnover

- Assistant Secretary Borzi out?
- Deputy Assistant Secretary Timothy Hauser stays
- CA Labor Commissioner Julie Su
 - Rumored to be Clinton pick
- Current Labor Secretary Tom Perez
 - Rumored to be Clinton AG



Tax Reform - I

- Personal income tax -- Highlights
 - Trump
 - 3 tax brackets of 12%, 25% and 33%
 - \$200k phase-out for itemized deductions
 - Clinton
 - 8 tax brackets from 10%-43.6% (\$5 m.+ have 4% surcharge)
 - ‘Buffett Rule’ – 30% minimum tax for taxpayers with \$1 m. AGI
 - Itemized deductions capped at tax value of 28%

Tax Reform - II

- Capital Gains -- Highlights
 - Trump
 - Retain current rates (maximum of 20%)
 - Clinton
 - 4 brackets based on income (0, 15%, 20%, 24%)
- Carried interest taxed as ordinary income
 - Supported by both candidates
- AMT
 - Trump – Repeal
 - Clinton – No stated position

Tax Reform - III

- Estate Tax
 - Current \$5.45 m./\$10.9 m.; 40% tax
 - Trump
 - Repeal estate tax
 - Estates over \$10 million – Capital gains on property taxed
 - Small business, family farms exempt
 - Contributions of appreciated assets to private charities disallowed
 - Clinton
 - Lower threshold exemption to \$3.5 m./45% tax (2009 level)
 - Increase rate to
 - 55% -- estates over \$55 m.
 - 65% -- estates over \$500 m.

Other Reforms

- College Planning
 - Clinton
 - College tuition-free for families earning less than \$85k
 - Refinancing student debt to lowest rates possible
 - Trump
 - Opposed to debt-free tuition plans, free community college
 - Let banks take over financing
- Social Security Reform
 - Clinton – expand benefits to widows, home care providers
 - Trump – No changes to current benefits
- Healthcare
 - Clinton supports Affordable Care Act with changes
 - Trump would repeal and replace ACA
 - Both support repeal of the ‘Cadillac’ tax

Post-November 8th Scenarios

- Under a divided government scenario*
 - Renewed political polarization in 115th Congress
 - White House
 - Reliance on
 - Executive directives
 - Activist agencies
 - Congressional response
 - Oversight hearings
 - Legislative riders to agency budgets
 - Legal challenges to new rules



* Where no party controls both Houses and the White House

Key Players in the Senate – 115th



Chuck Schumer
Majority Ldr.?



Sherrod Brown
Banking Chair



Elizabeth Warren
Banking



Ron Wyden
Finance



Bernie
Pensions?



Mitch McConnell
Majority Ldr.



Michael Crapo
Banking Chair?



Bob Corker
Banking



Orrin Hatch
Finance Chair

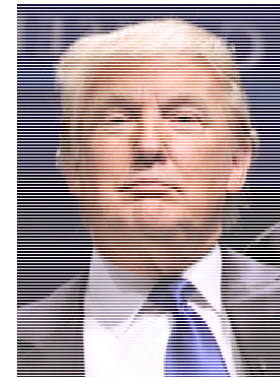


Lamar Alexander
Pensions

Fiduciary Conflicts in Government

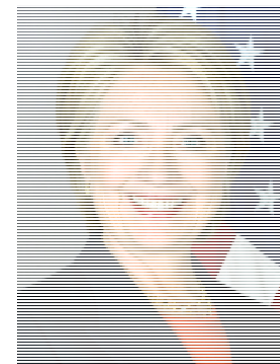
- Trump

- 500+ partnerships/closely held companies
- Est. \$630 m. federally regulated loans
- Foreign properties
- Self-dealing at Trump foundation?



- Clinton

- Clinton Foundation



Public Officials as Fiduciaries



- As fiduciaries, duties of public officials include*...
 - Care: Competently and faithfully execute the duties of the office
 - Loyalty: Put the public's interest before their own direct or indirect personal interests
 - Impartiality: Represent all of their constituents fairly
 - Accountability: Be transparent and guard against the arbitrary exercise of official power and secrecy in the political process
 - Maintain public trust in government: protect and promote the public trust; avoid even the appearance of impropriety
- Most legal scholars agree that elected officials are fiduciaries but also note inherent difficulty in specifying beneficiaries served and enforcing obligations
- Fiduciary oversight relies upon an informed and engaged electorate

* Source: *Public Officials as Fiduciaries*, May 31, 2016 by Hana Callaghan, Director of Government Ethics, Markkula Center for Applied Ethics, Santa Clara University

Questions

Additional information on fiduciary trends can be found at

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