

Regulatory Alert

Regulatory Insights



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First 100 Days: Upcoming Regulatory Signals for Private Equity

KPMG Insights

- **Regulatory Modification:** Initial agency regulatory changes expected to focus on the influence of corporate investors (e.g., proxy voting) and M&A relative to antitrust law.
- **Potential for Change:** Expect potential pullback from changes in areas such as agency objectives, actions under the Congressional Review Act, and/or legal action/challenge.
- **Upcoming Supervision/Enforcement:** Future supervision/enforcement likely to focus on evidence of investor harm and 'bad actors'; a re-direction of enforcements (e.g., FCPA, crypto/digital assets) is likely.

Private equity signals from incoming and acting agency leadership suggest a focus on capital formation, competition, investor protection and innovation. These signals include:

1. Agency Objectives, including Regulatory Shifts, Regulatory Modifications, and Enforcement Focus
2. Regulatory Focus, including M&A/Antitrust, Corporate Ownership, Digital/Crypto Assets, and AI/Innovation/Tech

1. Agency Objectives

The anticipated direction for upcoming regulatory actions can be derived from:

Signals	Description/Examples	Source
Regulatory Shifts	Implementation of new Staff Legal Bulletin No. 14M (CF), which rescinds Staff Legal Bulletin No. 14L and eases the ability of companies to exclude shareholder proposals (e.g., climate policy, corporate governance, human capital management) from proxy materials (e.g., “ordinary business” exclusion, economic relevance exclusion)	SEC Division of Corporation Finance bulletin Statement from Acting Chair
	<p>Implementation of new Compliance and Disclosure Interpretations (C&DIs) related to the proxy rules, including C&DIs covering:</p> <ul style="list-style-type: none"> — Securities and Exchange Act Sections 13(d) and 13(g) regarding beneficial ownership reporting, rescinding previous interpretations and adding restrictions regarding the use of Schedule 13G (generally for passive investors) — Communications with other shareholders through “exempt solicitations”, narrowing the permissible uses 	SEC Staff Guidance here and here
	Execution of passivity agreements (e.g., FDIC)	
	Attention to perceived potential financial stability risk based on past and anticipated future growth in private credit markets	FRB Financial Stability Report (Nov 2024) FRB Governor Remarks SEC Commissioner Remarks
	<p>Consideration of regulatory changes regarding:</p> <ul style="list-style-type: none"> — Retail investor participation in private markets — The definition of emerging growth companies 	SEC Acting Chair Remarks
Regulatory Modifications	Implementation of Executive Order on “Ensuring Accountability for All Agencies”, which requires all executive departments and agencies to submit all proposed and final significant regulatory actions to the Office of Information and Regulatory Affairs	White House
	Ongoing enforcement of 2023 Merger Guidelines for FTC, DOJ merger review analysis consistent with applicable law (FTC Chair says “prize stability and disfavor wholesale recession”) though potential for an “iterative and transparent revision process”	FTC Chair Memorandum DOJ Antitrust Division Memorandum
	<p>Potential actions under the Congressional Review Act (e.g., FTC Pre-merger notification, SEC Form N-PORT and N-CEN filings)</p> <p>Potential changes/extensions to tax laws (e.g., carried interest)</p>	

Enforcement Focus	Expected prioritization of SEC enforcement cases with tangible harm to investors and focus on individual liability for “bad actors” Reported restructuring of the SEC investigations process to require Commissioner approval prior to initiating formal orders of investigation (e.g., subpoena, production of documents, compel testimony) Potential change in enforcement stance to include re-direction in cryptocurrency/digital assets enforcement	
	Implementation of Executive Order pausing investigations and enforcement of the FCPA and directing review/revision of the related guidelines and policies	White House
	Implementation of DOJ Memo re-prioritizing enforcement focus of FCPA to foreign bribery that facilitates the criminal operations of Cartels and Transnational Criminal Organizations	DOJ Memo

2. Regulatory Focus

Agency leadership is also noting potential changes in key regulatory areas, including:

Signals	Description/Examples	Source
M&A/ Antitrust	Potential adoption of a more “nimble and predictable” approach specifically in the de novo formation and M&A	FRB Governor
	Continued focus on anti-monopoly/anti-competitive transactions and/or conduct and protection of workers (i.e., labor markets)	FTC Release
	Application of “factors and frameworks” under the 2023 Merger Guidelines when reviewing transactions for compliance with the U.S antitrust laws (e.g., series of acquisitions, trends toward consolidation)	
Corporate Ownership	Compliance with reporting requirements, as appropriate, including: — Consolidated Audit Trail — Regulation 13D-G Beneficial Ownership reporting related to proxy voting — Beneficial Ownership Information under the Corporate Transparency Act — Form PF filings	SEC Staff Guidance here and here FinCEN BOI
	Implementation of Executive Order on “Strengthening American Leadership in Digital Financial Technology”	White House
	Launch of a Crypto Task Force dedicated to developing “a comprehensive and clear regulatory framework for crypto assets”	Acting SEC Chair
Digital/Crypto Asset	Potential adoption of a more flexible approach to innovation and technology, including digital assets and tokenization	Acting FDIC Chair
	Implementation of Executive Orders on “America First Investment Policy” and “Defending American Companies and Innovators”	White House here and here
AI/Innovation/ Tech		

	Implementation of Executive Order on "Removing Barriers to American Leadership in AI", including AI Action Plan Naming of Special Advisor for AI and Crypto with responsibilities for overseeing regulatory frameworks, collaboration with officials and stakeholders, including PCAST, and alignment of AI priorities with administration policies	White House Actions here and here
	Implementation of Executive Order on "Strengthening American Leadership in Digital Financial Technology"	White House
	Launch of the SEC Cyber and Emerging Technologies Unit to complement the Crypto Task Force and enforce against misconduct related to innovation (e.g., fraud through AI, ML, blockchain technology, disclosure)	SEC Release
	Potential adoption of a more flexible approach to innovation and technology, including fintech partnerships	Acting FDIC Chair
	Reliance on third parties to support key systems and tools (e.g., AI, cybersecurity) Incidence and evolution of investment fraud	FINRA
	Increasing adoption of data-driven technologies for underwriting and valuation accuracy, as well as private credit manager valuations	

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