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A New Approach to Financial Regulatory Enforcement

By Nicole Danesh, J.D. Candidate 2019 | April 5, 2017

The regulatory enforcement of the financial industry may soon change. As the new administration settles into Washington; reports have suggested the rise of dedicated efforts to change, and potentially reduce, financial regulation by the Securities and Exchange Commission ("SEC") and the Consumer Financial Protection Bureau. While these efforts have not yet fully materialized, there are some indications that they will soon impact the financial services industry.

The pressures to alter the regulatory framework are two-fold. First, major banks want to change the way regulatory agencies collect data related to possible crimes. If the banks can modify the framework in a way that would shift more responsibility to the government, then this may lower the banks' costs of compliance. Second, government officials and regulatory agencies have taken steps to change the enforcement landscape from the top-down. For example, last month, the acting chairman of the SEC, Michael Piwowar, took steps to limit the agency's powers. Piwowar's directive gave exclusive power to the director of the enforcement division to authorize formal investigations. This will both limit inquiries *and* slow down the process of starting investigations. Consequently, the new structure will weaken financial regulatory enforcement.

Scaling back regulation may create undesirable consequences. Particularly concerning is the idea that violations can go undetected for quite some time until they grow into large and harmful issues. Additionally, a lack of sufficient regulation will increase the risk of another financial crisis.

On the other hand, excess regulations are not always desirable either. Too many regulations can create extremely high costs which may not be proportional to the consequential benefits of detecting minor violations. In order to prevent this, a current administration official and financial regulator has recently called for easing the strict requirements that arose after the 2008 crisis.

Ultimately, these new approaches might simply be an attempt to curb over-regulation. However, it may also offer a way for companies to tip-toe around the law in the name of generating profits. Regardless, regulatory agencies must strike a balance in structuring the new enforcement frameworks and make sure that the new regulatory regime is neither too stringent nor too lenient. This balance is key in preventing arbitrary targeting—wasting taxpayer resources in the process and burdening private businesses—and in incentivizing lawful behavior in the financial industry.