Davis Polk

CLIENT MEMORANDUM

Predictions on Possible Changes to and Timing of the Dodd-Frank Executive Compensation Provisions

December 12, 2016

With President-elect Donald Trump's transition underway, speculation has been rife as to the impact of his Administration and a Republican-controlled Congress on a variety of issues, including executive compensation. While one might assume that all of the recent executive compensation rules mandated by the Dodd-Frank Act are headed out the window, the fate of those rules will depend on two key variables:

- The first is the timing of the rules' effective and compliance dates as compared to the timing feasibility of the potential rollback vehicles, such as the Financial CHOICE Act, introduced by the chairman of the House Financial Services Committee earlier this year.

- The second variable consists of the views of the Trump Administration, its new SEC Commissioners and others about the policy goals and content of the rules, including the level of emphasis that they choose to give to executive compensation as a strategic matter.[1]

This memorandum predicts the fate of proposed and final executive compensation rules, recognizing that predictions are just that and that it is particularly difficult to make them in view of the relatively unconventional way in which the Trump transition team has operated thus far. We also explain the different potential vehicles for regulatory rollback and illustrate hypothetical timetables for each executive compensation rule, showing key compliance dates and the potential timing for any repeal or amendment of the relevant rule.

Our Current Prognosis

Based on the information that we have to date, here is our current prognosis for the following Dodd-Frank rules:

- **Pay ratio disclosure**: This rule is already final and effective, although it is likely near the top of the list of executive compensation provisions targeted for repeal by the Republican-controlled Congress and many individuals with influence within the Trump transition team. If the CHOICE Act were to be enacted as is, the Dodd-Frank statutory basis for the rule would be repealed, but, as a practical matter:
    - Enactment of CHOICE Act may not be realistic until mid-2017 at the earliest and possibly later into 2018; and

[1] For more information on the possible reorientation of the financial regulatory framework more generally, see our **earlier memorandum**.

- o The basis for the SEC's rule requiring pay ratio disclosure (i.e., Item 402(u) of Regulation S-K) is predicated on more statutory authority than just the Dodd-Frank Act. Accordingly, the mere elimination of the Dodd-Frank statutory basis would still leave the rule in effect, unless the CHOICE Act were revised or additional legislation were enacted to also repeal the rule. The SEC itself could instead take action to repeal or amend the rule (subject to a notice and comment period).

  - In addition, while the CHOICE Act makes it clear that many Republicans in Congress are critical of the pay ratio rule, it is less clear whether the new Republican coalition uniformly views the rule as anathema.

  - Given this, our advice to calendar-year companies is to continue to prepare to include the pay ratio disclosure in their 2018 proxy statements. Non-calendar year companies will have at least one more year of breathing room, because the first applicable reporting period is a company's first full fiscal year commencing on or after January 1, 2017.

- **Clawback**: Companies can reasonably expect not to be required to adopt clawback policies in the form prescribed in the proposed SEC rule, much less comply with the SEC disclosure requirement, in 2017, given that a final rule has not yet been adopted. Even if the rule were finalized, it has a drawn-out compliance date that involves further implementing action by the national securities exchanges. The provisions of the CHOICE Act would replace the Dodd-Frank clawback requirement with a narrower rule that would limit clawbacks to current or former executive officers who had control or authority over the company's financial reporting that resulted in an accounting restatement. That said, clawback policies generally enjoy strong investor and popular support. As a result, many companies, including financial institutions swayed by European requirements, have already implemented clawback policies of their own that are largely predicated on finding fault. We anticipate that this trend will continue.

- **Say-on-pay**: The CHOICE Act would amend the rule to require say-on-pay votes only when there are material changes made to a company's executive compensation. However, say-on-pay is now a well-accepted corporate governance practice and has the support of many institutional investors. For companies, the say-on-pay vote serves as a safety valve measure by which shareholders can express their disapproval of companies' pay practices without voting against directors. Thus, we anticipate that say-on-pay practices will continue in the near term and that, even in the event of a change in law, any resulting change in practice will likely be implemented over time.

- **Pay-versus-performance disclosure**: This rule is still in proposed form and is not covered by the CHOICE Act. Companies can reasonably expect not to be required to provide the Dodd-Frank-mandated disclosure in 2017 and likely longer. That said, institutional investors will continue to care deeply that companies remunerate their executive officers on the basis of performance and that they disclose pay decisions in a clear and transparent manner.

- **Hedging disclosure**: This rule is still in proposed form, and the CHOICE Act would repeal the statutory basis for this disclosure requirement. Companies can reasonably expect not to be required to provide the Dodd-Frank mandated disclosure in 2017 and likely longer. However, many companies already have policies that prohibit some form of hedging by their directors and executive officers, and we do not expect that to change.

- **Compensation committee and advisor independence**: This rule has been in effect since 2012 and separately reflected in the listing standards of the national securities exchanges, and there has not been any push to repeal or amend it. Thus, companies can reasonably expect to continue to be required to comply with this rule for the foreseeable future.

- **For financial institutions, prohibitions on certain kinds of incentive compensation**: This proposed rule is highly unlikely to be finalized before inauguration, given that it is required to be approved by six separate independent agencies. Post-inauguration, we do not expect the Trump Administration to focus on this proposal, which would prohibit incentive compensation arrangements of covered financial institutions that are excessive or that could lead to the financial institution's material financial loss, in the way that the Obama Administration did. In addition, the CHOICE Act would repeal the Dodd-Frank basis for the proposed rule. Finally, even if the statutory requirement were not repealed and the rule were finalized, it has a drawn-out compliance date. Thus, financial institutions can reasonably expect not to be required to be subject to this rule until at least 2019, if ever. That said, financial institutions that are supervised by the Federal Reserve, the FDIC or the OCC will remain subject to the existing safety and soundness guidance regarding incentive compensation, which has resulted in voluntary deferrals and clawbacks, unless that guidance itself is later modified.

As a reference, Appendix A provides a chart of the Dodd-Frank provisions, a summary of their current status and their proposed treatment under the CHOICE Act. Appendix B provides examples of public statements by different policymakers and advisors who appear to be influential with President-elect Trump and who have been vocal about their disapproval of many of these rules.

Process for Regulatory Rollback

As explained in our **financial regulatory reform blog**, any rollback of the Dodd-Frank Act and its implementing regulations will likely be complex and messy, and may take longer than it may first appear. In the case of the Dodd-Frank's executive compensation provisions, there are a few avenues to repeal or amendment:

- **Repeal of statute:** Congress could enact a new statute, such as the CHOICE Act, or select portions of it, that immediately repeals or amends the Dodd-Frank Act, which would have the effect of nullifying any regulations adopted solely under the repealed statute's authority. This would require a majority of votes in the House and, because of the threat of a filibuster, 60 votes in the Senate. The new Republican majority will need several Democratic Senators to achieve this number, the precise number perhaps turning on whether any Democratic Senators accept appointments in the Trump Administration. If the Senate can link the statutory act, whether repeal or amendment, to the federal budget, it can propose budget reconciliation legislation, which would only require a simple majority to pass. Even assuming that financial services reform in general is a priority for the Trump Administration's first 100 days, the importance of executive compensation to the new Republican coalition is unclear.

  As the hypothetical timetables below illustrate, assuming that Congress were to pass legislation repealing some or all of the Dodd-Frank executive compensation provisions within 100 days after President-elect Trump's inauguration (i.e., by May 1, 2017), the 2017 proxy season will be well underway and calendar-year companies will likely have already filed their proxy statements. How quickly Congress acts, if at all, will depend not only on the general political support for financial regulatory relief, but also on the other policy priorities of Republicans for the new Administration's first year in office. As noted, however, the implementing rules for most of the Dodd-Frank executive compensation provisions will likely not affect the 2017 proxy season, and the most onerous of the rules that have been finalized (i.e., the pay ratio rule) do not require compliance until 2018, all of which may cause Republicans to deprioritize compensation legislation.

- **Statutory repeal of regulation:** A new statute could also repeal a regulation. For example, Congress could repeal the final pay ratio rule, rather than, or in addition to, repealing the Dodd-Frank statutory basis for the pay ratio rule. In either case, the timing would be the same as above: the process could be either quick or slow and would require 60 votes in the Senate.

- **Agency repeal or change of final rule:** An agency, under new leadership, could propose to repeal or amend a final rule with a notice and comment process that is likely to take several months to accomplish.

  It should be noted that when SEC Chair Mary Jo White steps down at the end of the Obama Administration, the SEC will only have two Commissioners—one Republican and one Democrat. It is reasonable to assume that no significant SEC action will be taken to repeal or amend any Dodd-Frank rule until at least one new Commissioner is nominated and confirmed.[2] In the last several Administration changes, it took approximately six months from the new President's inauguration for the new Administration's first SEC nominee to be confirmed,[3] and it is possible that Congressional Republicans will be in no rush to fill the SEC vacancies.

- **Suspension of midnight regulations:** Although it appears unlikely for these rules, an agency could attempt to finalize a rule between now and Inauguration Day, issuing what is often referred to as a "midnight regulation." The effectiveness of the rule, like all federal regulations, would require its publication before Inauguration Day in the Federal Register, which typically takes two weeks to two months on average. Incoming Presidents can order executive agencies to withdraw from publication in the Federal Register any final regulations that have not yet been published. While the authority of the President to send similar directives to independent agencies is less certain, in the past, some independent agencies have voluntarily complied with a Presidential directive to withdraw recently voted-upon regulations from publication. Relevant for purposes of this memorandum, the FDIC, Federal Reserve, FHFA, NCUA, OCC and SEC are all independent agencies.

- **Congressional Review Act:** Under a rarely used statute called the Congressional Review Act, Congress could, until well into the first quarter of 2017, invalidate regulations promulgated as far back as June 2016 under fast-track procedures with a simple majority in each house. The CRA would not apply to any of the already final and effective Dodd-Frank executive compensation rules, because they were finalized before June 2016, but it could apply to any proposed executive compensation rules that become midnight regulations.

- **Proposed rules dying on the vine:** If an agency does not approve a proposed rule as final, it remains in proposed form. It may languish, or be withdrawn, re-proposed or voted upon by agency leaders appointed by the incoming Administration. We currently do not have any insight into the priorities of a new SEC Chair, who may also consider the views of the Administration that appointed him or her.

[2] Generally, the SEC requires three Commissioners to be present to constitute a quorum. There is a special rule allowing for a quorum if there are less than three Commissioners in office. As a practical matter, the two Commissioners would effectively be unlikely to take significant action, given the party-line split.

[3] An exceptional case is that of Mary Schapiro, who was nominated and confirmed in 2009 within seven days after President Obama's inauguration in the midst of the financial crisis.

Hypothetical Timetables

Over the next few pages, we make our predictions as to the likelihood, or not, of Dodd-Frank's executive compensation rules surviving intact in the Trump Administration and the Republican-controlled Congress, and provide hypothetical timetables that show the earliest plausible timing for any repeal or amendment.

The timetables make a number of assumptions, most of which are highly unlikely, as they assume that the Trump Administration and Congress would include executive compensation in its initial set of priorities and move at breakneck speeds to act to repeal or amend the relevant rules. Nonetheless, we thought it would be useful as a thought exercise to illustrate what the earliest plausible dates might be for rule changes in relation to proxy deadlines and compliance dates.

The assumptions are:

- The current SEC approves all rules that have not yet been finalized at the end of 2016 and these rules are published in the Federal Register before January 20, 2017, making them midnight regulations potentially subject to repeal by the CRA. We note that, unlike with other Dodd-Frank rules, the SEC has not stated any desire to finalize and publish the outstanding rules on executive compensation provisions by the end of this year. In addition, as can be seen from the timetables, midnight regulation is virtually impossible, with less than six weeks left to finalize and publish rules before Inauguration Day.
- Congress passes a version of the CHOICE Act, with the relevant executive compensation provisions, into law on the 100th day after inauguration (i.e., May 1, 2017).
- Republican SEC Commissioners are appointed on July 1, 2017.
- The SEC, with its new Commissioners, immediately issues proposals relating to applicable regulations (including to repeal prior rules), and the regulations are effective 30 days after a 30–90 day comment period (i.e., 60–120 days following the proposal).
- The company operates on a calendar-year fiscal year, with a proxy filing deadline of April 30

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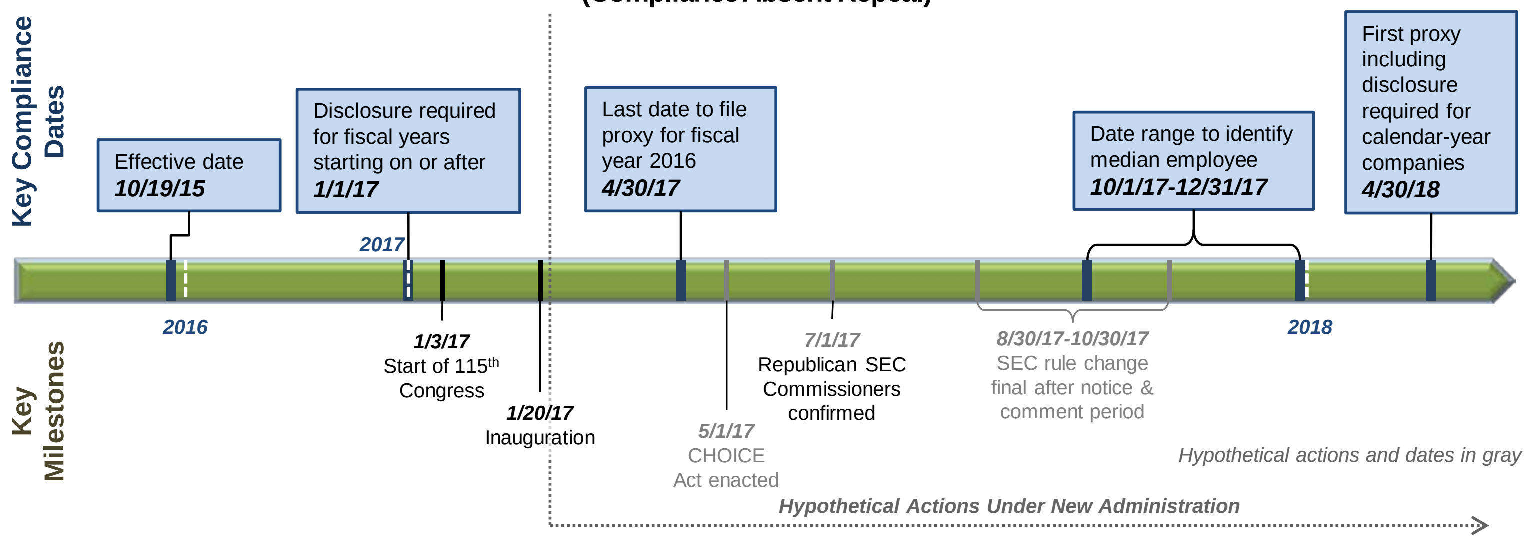
As of December 12, 2016

Hypothetical Timetable of the Pay Ratio Disclosure Rule
(Compliance Absent Repeal)



PROGNOSIS	FACTORS	CONSIDERATIONS FOR 2017 COMPENSATION
Likely Repealed Eventually	▪ Criticized by Congressional Republicans and other key Republicans ▪ CHOICE Act would repeal Dodd-Frank statutory basis for rule, but repeal may not be realistic until mid-2017 at the earliest and possibly later into 2018 ▪ As an administrative law matter, rule will still be in effect, unless CHOICE Act revised or additional legislation enacted to also repeal rule. SEC itself could instead take action to repeal or amend rule.	▪ We advise calendar-year companies to continue to prepare to include pay ratio disclosures ▪ Non-calendar year companies will have one more year of breathing room

Assumptions for Hypothetical Timetable

- *Congress enacts CHOICE Act, as is, on the 100th day after inauguration (i.e., May 1, 2017).*
- *Republican SEC Commissioners are confirmed on July 1, 2017.*
- *SEC, with its new Commissioners, immediately proposes new regulations (including to repeal) that are effective 30 days after 30–90 day comment period.*
- *Company operates on calendar-year fiscal year, with proxy filing deadline of April 30.*

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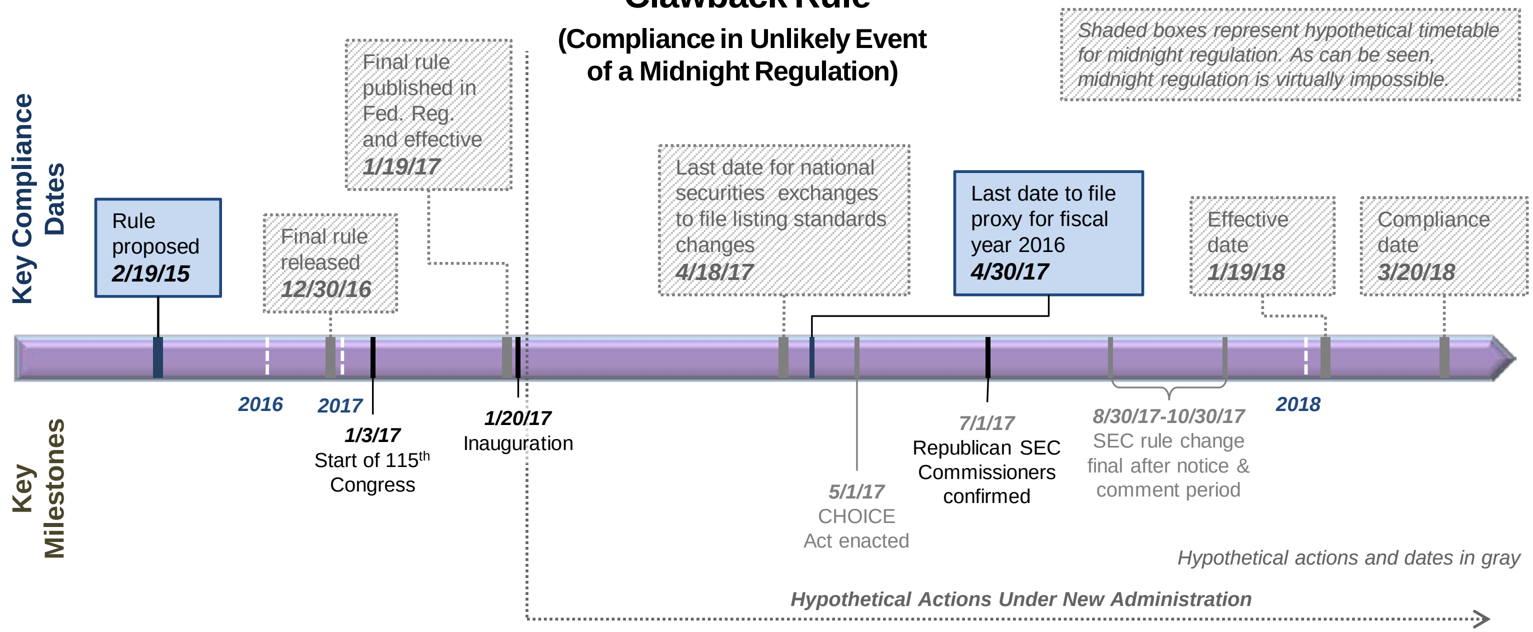
Hypothetical Timetable of the Clawback Rule

(Compliance in Unlikely Event of a Midnight Regulation)



PROGNOSIS	FACTORS	CONSIDERATIONS FOR 2017 COMPENSATION
Likely Amended Eventually	▪ Rule in proposed form ▪ CHOICE Act would replace Dodd-Frank clawback requirement with narrower rule ▪ Drawn-out compliance date, even if rule were finalized ▪ Clawback policies enjoy strong investor and popular support	▪ Companies can reasonably expect not to be required to adopt clawback policies in the form prescribed in the proposed SEC rule, much less comply with the SEC disclosure requirement, in 2017 ▪ Many companies have already implemented their own clawback policies, and we anticipate this trend will continue

Assumptions for Hypothetical Timetable

- *Current SEC finalizes all proposed rules on Dec. 30, 2016 and final rules are published in Fed. Reg. on Jan. 19, 2017, making them midnight regulations.*
- *Final rule will adopt the same implementation dates for national securities exchanges as in the proposed rule.*
- *Congress enacts CHOICE Act, as is, on the 100th day after inauguration (i.e., May 1, 2017).*
- *Republican SEC Commissioners are confirmed on July 1, 2017.*
- *SEC, with its new Commissioners, immediately proposes new regulations (including to repeal) that are effective 30 days after 30–90 day comment period.*
- *Company operates on calendar-year fiscal year, with proxy filing deadline of April 30.*

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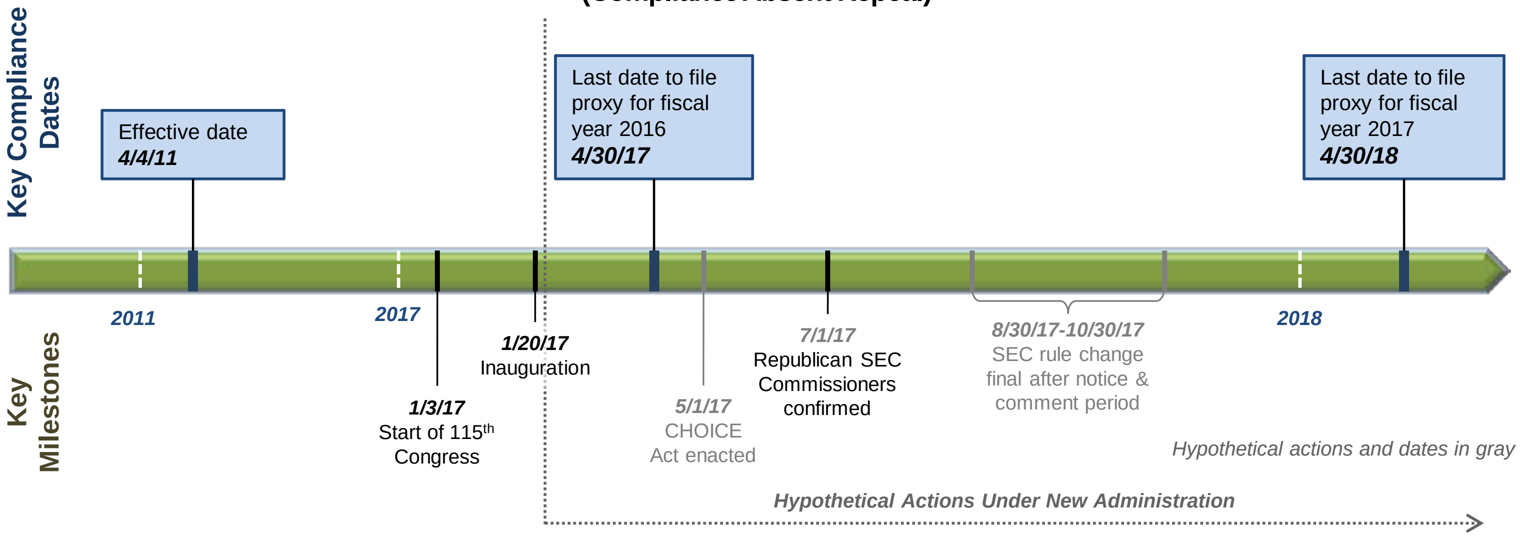
Hypothetical Timetable of the Say-on-Pay Rule
(Compliance Absent Repeal)



PROGNOSIS	FACTORS	CONSIDERATIONS FOR 2017 COMPENSATION
May Be Amended Eventually, But May Not Affect Practice	▪ CHOICE Act would amend rule to require say-on-pay only when there are material changes made to a company's executive compensation ▪ Say-on-pay is now a well-accepted corporate governance practice and has the support of many institutional investors ▪ Most companies are familiar with process after six years of holding say-on-pay votes	▪ We anticipate that say-on-pay practices will continue in the near term ▪ Even in the event of a change in law, any resulting change in practice will likely be implemented over time

Assumptions for Hypothetical Timetable

- *Congress enacts CHOICE Act, as is, on the 100th day after inauguration (i.e., May 1, 2017).*
- *Republican SEC Commissioners are confirmed on July 1, 2017.*
- *SEC, with its new Commissioners, immediately proposes new regulations (including to repeal) that are effective 30 days after 30–90 day comment period.*
- *Company operates on calendar-year fiscal year, with proxy filing deadline of April 30.*

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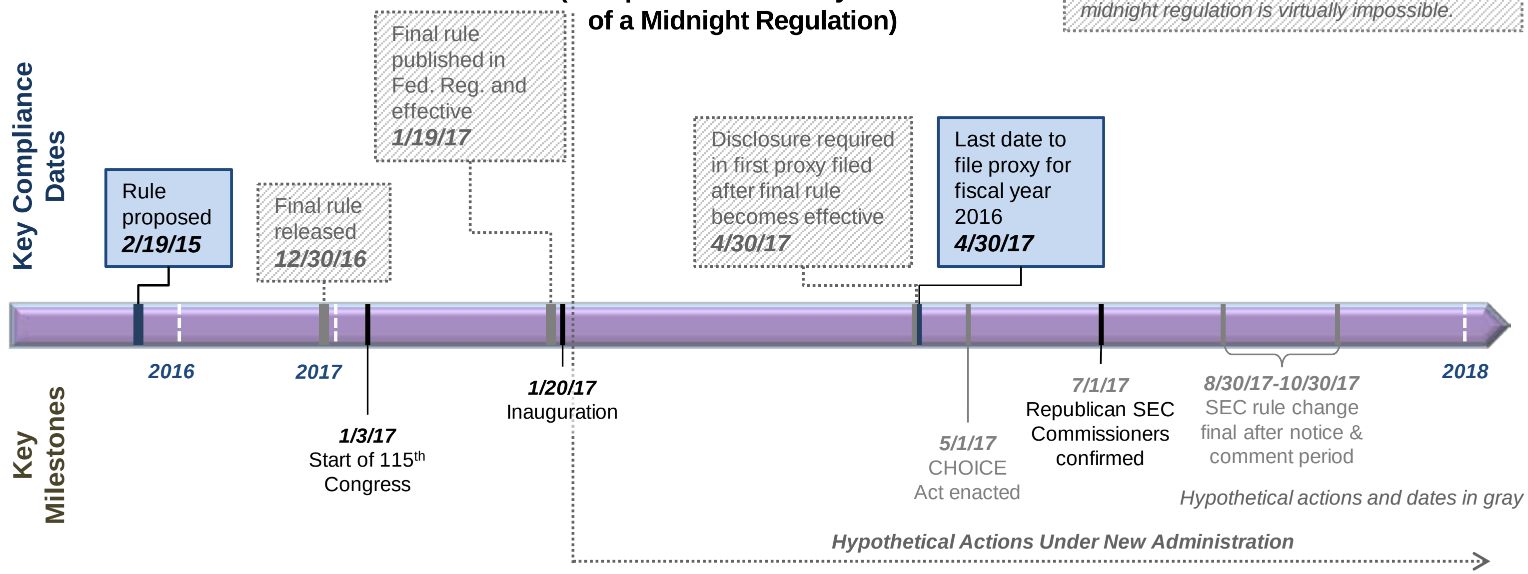
Hypothetical Timetable of the Pay-Versus-Performance Disclosure Rule

(Compliance in Unlikely Event of a Midnight Regulation)

Shaded boxes represent hypothetical timetable for midnight regulation. As can be seen, midnight regulation is virtually impossible.



PROGNOSIS	FACTORS	CONSIDERATIONS FOR 2017 COMPENSATION
May Die on Vine	▪ Rule in proposed form ▪ Not covered by the CHOICE Act	▪ Companies can reasonably expect not to be required to provide the Dodd-Frank-mandated disclosure in 2017 and likely longer ▪ Institutional investors will continue to care deeply that companies remunerate their executives for performance and clearly and transparently disclose pay decisions

Assumptions for Hypothetical Timetable

- *Current SEC finalizes all proposed rules on Dec. 30, 2016 and final rules are published in Fed. Reg. on Jan. 19, 2017, making them midnight regulations.*
- *Congress enacts CHOICE Act, as is, on the 100th day after inauguration (i.e., May 1, 2017).*
- *Republican SEC Commissioners are confirmed on July 1, 2017.*
- *SEC, with its new Commissioners, immediately proposes new regulations (including to repeal) that are effective 30 days after 30–90 day comment period.*
- *Company operates on calendar-year fiscal year, with proxy filing deadline of April 30.*

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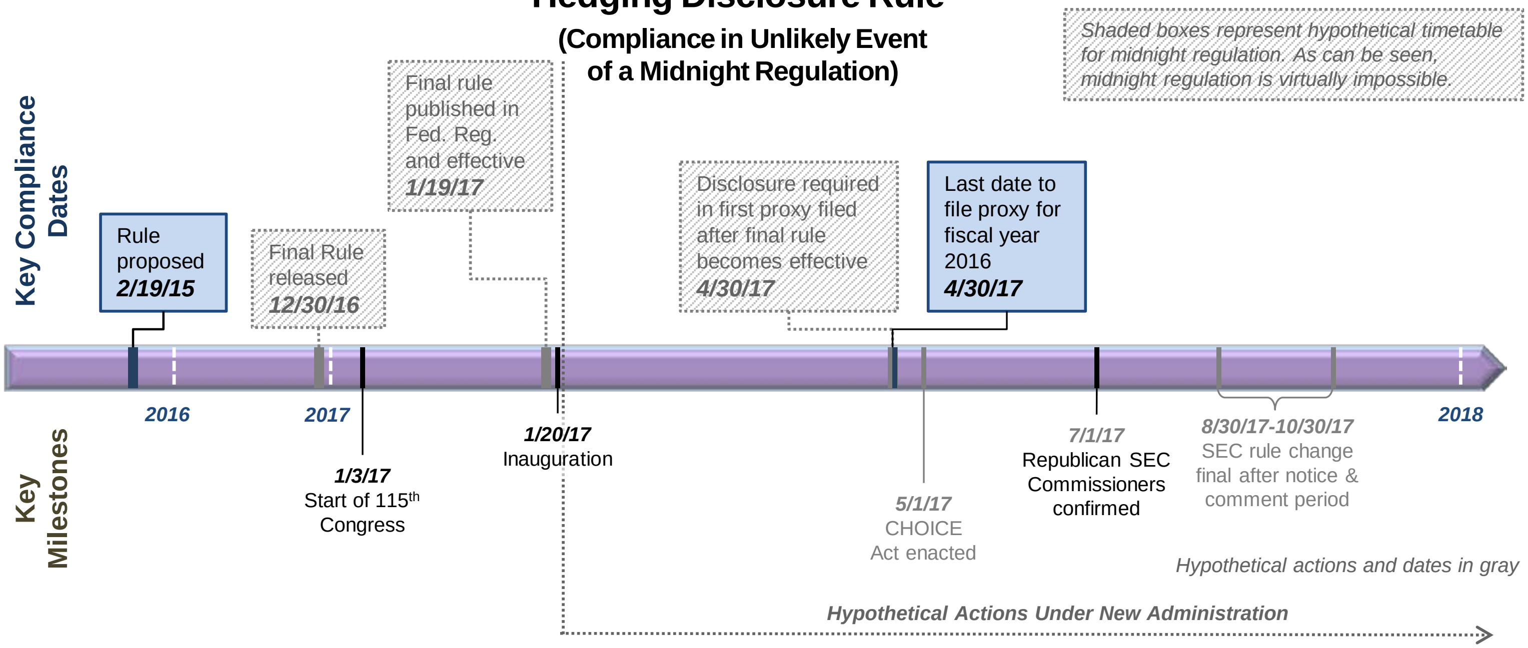
Hypothetical Timetable of the Hedging Disclosure Rule

(Compliance in Unlikely Event of a Midnight Regulation)



PROGNOSIS	FACTORS	CONSIDERATIONS FOR 2017 COMPENSATION
Likely Repealed Eventually or May Die on Vine	▪ Rule in proposed form ▪ CHOICE Act would repeal statutory basis for rule	▪ Companies can reasonably expect not to be required to provide the Dodd-Frank-mandated disclosure in 2017 and likely longer ▪ Many companies already have policies that prohibit some form of hedging by their directors and executive officers, and we do not expect that to change

Assumptions for Hypothetical Timetable

- *Current SEC finalizes all proposed rules on Dec. 30, 2016 and final rules are published in Fed. Reg. on Jan. 19, 2017, making them midnight regulations.*
- *Congress enacts CHOICE Act, as is, on the 100th day after inauguration (i.e., May 1, 2017).*
- *Republican SEC Commissioners are confirmed on July 1, 2017.*
- *SEC, with its new Commissioners, immediately proposes new regulations (including to repeal) that are effective 30 days after 30–90 day comment period.*
- *Company operates on calendar-year fiscal year, with proxy filing deadline of April 30.*

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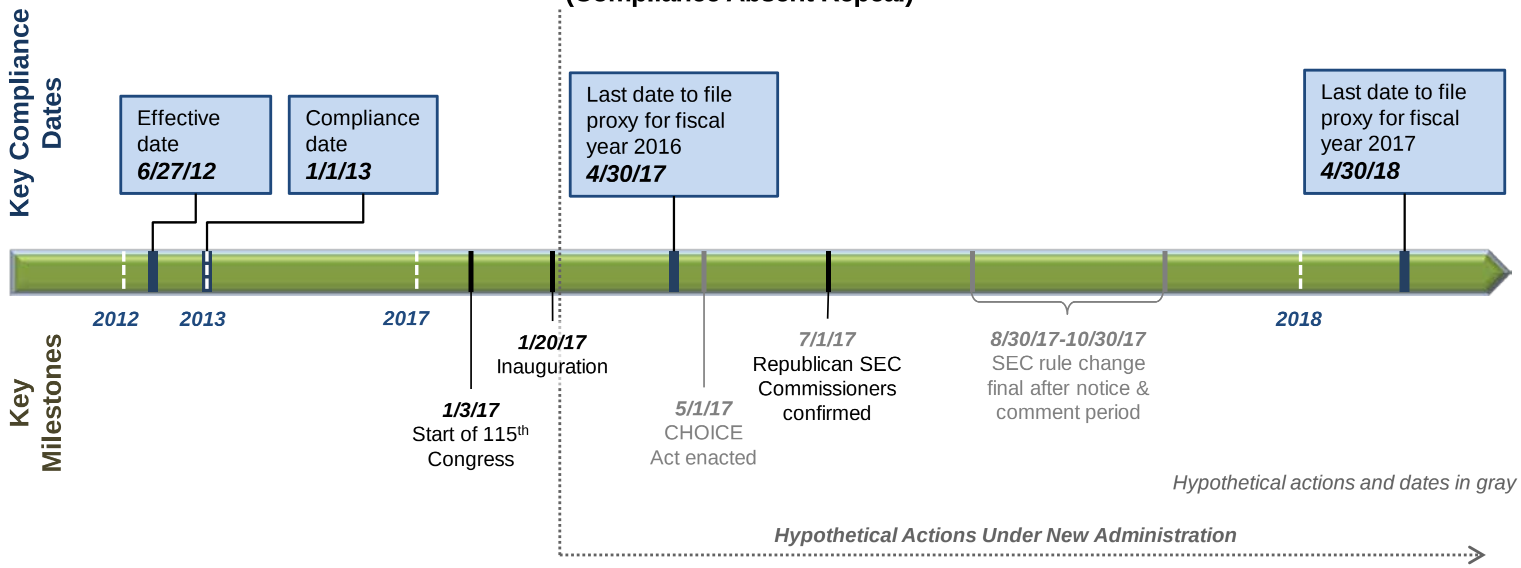
Hypothetical Timetable of the Compensation Committee and Advisor Independence Rule

(Compliance Absent Repeal)



PROGNOSIS	FACTORS	CONSIDERATIONS FOR 2017 COMPENSATION
Unlikely to be Repealed	▪ Rule has been in effect since 2012 ▪ Rule separately reflected in the listing standards of the national securities exchanges ▪ No push to repeal or amend the rule	▪ Companies can reasonably expect to continue to be required to comply with this rule for the foreseeable future

Assumptions for Hypothetical Timetable

- *Congress enacts CHOICE Act, as is, on the 100th day after inauguration (i.e., May 1, 2017).*
- *Republican SEC Commissioners are confirmed on July 1, 2017.*
- *SEC, with its new Commissioners, immediately proposes new regulations (including to repeal) that are effective 30 days after 30–90 day comment period.*
- *Company operates on calendar-year fiscal year, with proxy filing deadline of April 30.*

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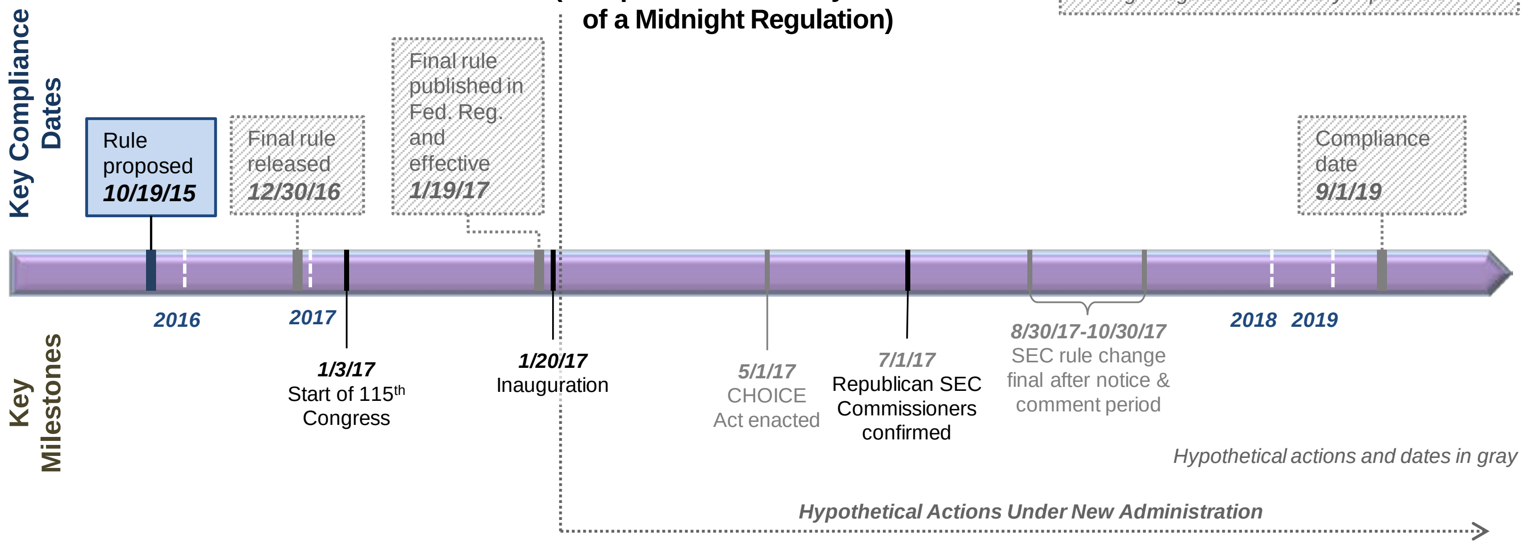
Hypothetical Timetable of the Financial Institution Incentive Compensation Rule

(Compliance in Unlikely Event of a Midnight Regulation)

Shaded boxes represent hypothetical timetable for midnight regulation. As can be seen, midnight regulation is virtually impossible.



PROGNOSIS	FACTORS	CONSIDERATIONS FOR 2017 COMPENSATION
Likely Repealed or Dies on Vine	▪ Least likely of executive compensation rules to be finalized before inauguration, given that it is required to be approved by six separate independent agencies ▪ CHOICE Act would repeal Dodd-Frank basis for the currently proposed rule ▪ Drawn-out compliance date, even if statutory requirement not repealed and rule were finalized	▪ Financial institutions can reasonably expect not to be required to be subject to this rule until at least 2019, if ever ▪ Financial institutions that are supervised by the Federal Reserve, FDIC and OCC will remain subject to the existing safety and soundness guidance regarding incentive compensation, unless that guidance itself is later modified

Assumptions for Hypothetical Timetable

- *Current SEC (and, in the case of this rule, five other agencies) finalizes all proposed rules on Dec. 30, 2016 and final rules are published in Fed. Reg. on Jan. 19, 2017, making them midnight regulations.*
- *Congress enacts CHOICE Act, as is, on the 100th day after inauguration (i.e., May 1, 2017).*
- *Republican SEC Commissioners are confirmed on July 1, 2017.*
- *SEC, with its new Commissioners, immediately proposes new regulations (including to repeal) that are effective 30 days after 30–90 day comment period.*

Appendix A

Rule	Dodd-Frank Act Section	Relevant Agency(ies)	Current Status of Rule	Fed. Reg. Publication Date	Proposed or Final Effectiveness Schedule	Proposed Treatment under the Financial CHOICE Act
Pay Ratio	953(b)	SEC	Final	Aug. 18, 2015	Effective Oct. 19, 2015 Pay ratio disclosure will be required as part of executive compensation disclosure in proxy statements or Form 10-Ks filed starting in 2018 for calendar-year companies and in 2019 for non-calendar year companies	Repeal
Clawback	954	SEC	Proposed	July 14, 2015	Companies will need to comply following the effectiveness of the amended listing standards issued by the national securities exchanges. These listing standards will be required to be issued within 90 days after the final SEC rule is published in the Federal Register and must become effective within one year after the final SEC rule is published in the Federal Register.	Amend Would limit clawbacks to current or former executive officers of a publicly traded company who had control or authority over the company's financial reporting that resulted in the accounting restatement
Say-on-Pay	951	SEC	Final	Feb. 2, 2011	Effective Apr. 4, 2011	Amend Would amend to have say-on-pay only when public company makes material change to its executive compensation
Pay-Versus-Performance	953(a)	SEC	Proposed	May 7, 2015	In the first proxy statement filed after the final rule becomes effective	N/A
Hedging	955	SEC	Proposed	Feb. 17, 2015	Unspecified	Repeal

Rule	Dodd-Frank Act Section	Relevant Agency(ies)	Current Status of Rule	Fed. Reg. Publication Date	Proposed or Final Effectiveness Schedule	Proposed Treatment under the Financial CHOICE Act
Compensation Committee and Advisor Independence	952	SEC	Final	June 27, 2012	Effective July 27, 2012	N/A
Financial Institution Incentive Compensation	956	NCUA FDIC FHFA OCC Federal Reserve SEC	Proposed	June 10, 2016	Effective on the first day of the calendar quarter 540 days (18 months) after the final rule is published in the Federal Register	Repeal Would repeal interagency rulemaking requirement to prohibit incentive compensation of covered financial institutions from being excessive or from leading to material financial loss to the institution; current proposed rule would require mandatory deferrals and clawback for sizable populations at institutions with more than $50 billion in assets. Would retain interagency guidance that compensation must be consistent with safety and soundness standards.

Appendix B

Rule	Public Statements from Republican SEC Commissioners and Individuals with Influence within the Trump Transition Team
Pay Ratio	"[T]he SEC implemented rules under the Dodd-Frank Act that have nothing to do with fixing the actual causes of the financial crisis and only add to the regulatory burdens facing U.S. companies, both large and small, including, among others, the conflict minerals, resource extraction, and CEO pay ratio disclosure rules." (Trump Transition Team Senior Advisor on Financial Regulation and Former SEC Commissioner Paul Atkins, Apr. 14, 2016) [4] "Pursuing a pay ratio rulemaking was wrong then and remains wrong now." (SEC Commissioner Michael S. Piwowar, Aug. 5, 2015)[5]
Clawback	"Our economic analysis notes that risk-averse executives prefer predictable compensation and that the proposal will introduce an additional source of uncertainty in compensation levels. Because the mandated recovery policy would be 'no-fault,' a material accounting error would require executives to return excess incentive-based compensation even if they had no role in the error." (SEC Commissioner Michael S. Piwowar, July 1, 2015)[6] The clawback rule is "[p]athetic" and may raise constitutional questions about the Fifth Amendment takings clause and the impairment of contracts. [Ralph Ferrara] would vote against the rule, but "[w]e'll have to live with it." (Former SEC General Counsel Ralph Ferrara, Nov. 9, 2015)[7]
Pay-Versus-Performance	"[T]he singular focus on one-year TSR may make corporate executives more likely to engage in efforts such as increasing debt, cutting research and development, and engaging in stock buy-backs to increase stock prices in the short-term to the detriment of long-term performance. On the other hand, a principles-based approach would reduce the risk that the disclosure requirements could lead registrants to game their compensation structures." (SEC Commissioner Michael S. Piwowar, Apr. 29, 2015)[8]

[4] *The JOBS Act at Four—Examining Its Impact and Proposals to Further Enhance Capital Formation: Hearing Before the H. Comm. On Fin. Servs*., 114th Cong, 2nd. Sess. (Apr. 14, 2016) (testimony of Paul S. Atkins, CEO, Patomak Global Partners, LLC).

[5] Michael S. Piwowar, *Dissenting Statement at Open Meeting on Pay Ratio Disclosure* (Aug. 5, 2015), *available at* https://www.sec.gov/news/statement/dissenting-statement-at-open-meeting-on-pay-ratio-disclosure.html.

[6] Michael S. Piwowar, *Dissenting Statement at an Open Meeting on Dodd-Frank Act "Clawback" Provision* (July 1, 2015), *available at* https://www.sec.gov/news/statement/statement-at-open-meeting-on-clawbacks-of-erroneously-awarded-co.html.

[7] David Lat, *Is the Proposed SEC Clawback Rule a Mistake? Some Expert Perspectives, Above The Law* (Nov. 13, 2015), *available at* http://abovethelaw.com/2015/11/is-the-proposed-sec-clawback-rule-a-mistake-some-expert-perspectives.

[8] Michael S. Piwowar, *Dissenting Statement at Open Meeting on Pay Versus Performance Disclosures* (Apr. 29, 2015), *available at* https://www.sec.gov/news/statement/statement-pay-versus-performance.html.

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Rule	Public Statements from Republican SEC Commissioners and Individuals with Influence within the Trump Transition Team
Hedging	"[W]e cannot determine that the benefits of this regulation justify the costs with respect to EGCs and SRCs." "[T]he utility of a disclosure about the alignment of incentives between investors and directors based on whether hedging of shares is permitted is questionable" and "we are concerned that the release expressly seeks comment on whether to extend the disclosure requirement to all funds, including open-end funds." "[W]e believe the Commission should have exercised its statutorily-granted exemptive authority to exempt from the rule disclosures relating to employees that cannot affect the company's share price." "[W]e are concerned that the release's coverage of securities not just of the issuer, but also of the issuer's affiliates—including subsidiaries, parents, and brother-sister companies—is overbroad." "Finally, we would be remiss if we did not note that the determination to move forward with this release reflects a prioritization of the Commission's work that we do not share. If we are to focus on Dodd-Frank implementation, it should be on those rules actually germane to the financial crisis …." (SEC Commissioner Michael S. Piwowar and Former SEC Commissioner Daniel M. Gallagher, Feb. 9, 2015).[9]

[9] Daniel M. Gallagher and Michael S. Piwowar, *Joint Statement on the Commission's Proposed Rule on Hedging Disclosures* (Feb. 9, 2015), *available at* https://www.sec.gov/news/statement/020912ps-cdmg-cmsp.html.

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your regular Davis Polk contact.

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