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The Presidential Election: Trying to Become Comfortable in an Uncertain Time

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***Saturday Night Live* (*SNL*) has been a mainstay of my television diet since my teenage years in the early 1980s. Shortly after the election, *SNL* featured Alec Baldwin portraying Donald Trump in a skit about Mr. Trump's transition from sales into fulfillment. I think it beautifully tapped into the feeling of uncertainty that all Democrats and Republicans, and the rest of the world, have with respect to Mr. Trump's presidency and the changes that appear to be forthcoming. *The New York Times* has coined this feeling of uncertainty as "The Trump Effect."[1]**

As a transactional lawyer specializing in mergers and acquisitions and public- and private-equity transactions, I could feel this uncertainty begin to bubble through this summer as the election season took off in earnest, and both sides' campaign rhetoric, although entertaining, had me reminiscing about Tommy Flanagan, John Lovitz's character on *SNL* who had a penchant for puffery. Several of my investment banker contacts throughout the country remarked to me over the summer that the pipeline had slowed because of the election cycle. Sure enough, the fall has been a bit slower than the hectic pace of the first eight months of 2016. The statistics from deal sources bear this out, as the number of deals in the 3Q were drastically down from the first two quarters. Although stock markets are close to all-time highs, industries within the "chopping block" of Trump's rhetoric on Obamacare, environmental laws and free trade (hospital companies, rail industry companies, alternative energy companies) have slumped while stocks of banks, defense contractors and construction and heavy machinery companies have skyrocketed on Trump's promises with respect to the repeal of Dodd-Frank and spending on infrastructure and defense. However, I cannot remember a president-elect that has been as vague on specifics of future policies.

So what are we to think about President-elect Trump's specific impact on business? At this point, we simply don't have enough details to know exactly which campaign rhetoric will make it into policies of the Trump Administration. However, given that there is a Republican majority in the House and the Senate, I would surmise that the truth about Trump's future policies lie more in tune with that of the Republican Party congressional leadership. In that regard, I believe four areas should be closely monitored by business owners in the upcoming months:

1. **Tax Law Amendments and Effect on Choice of Entity.** Mr. Trump's proposed tax plan decreases the number of individual tax rates from 7 to 3 (33, 25 and 12 percent). Capital gains would remain at 20 percent. However, the tax rate for C corporations would decrease from the highest level of 35 to 15 percent. Currently, C corporation status is not as attractive for many businesses as a pass-through entity, such as an LLC or S corporation, because the highest effective tax rate is 55 percent (35 percent at corporate level and 20 percent dividend) verses 39.6 percent for a pass-through entity which represents the highest individual tax bracket. Under Trump's plan, the highest effective tax rate for C corporations would be 35 percent (15 percent at corporate level and 20 percent dividend) versus a 33 percent highest effective tax rate of pass-through entities. If the corporate tax level changes, it may be more attractive to choose a C corporation as a choice of entity rather than a pass-through entity, such as an LLC or S corporation. This is something that all business owners should carefully follow during the first 100 days of the Trump Administration. House Republicans have proposed a similar tax plan called "A Better Way" blueprint, but their current proposal puts the highest

corporate bracket at 25 percent rather than 15 percent.

2. **Dodd-Frank Amendments.** Enacted in 2010 as a result of the 2008 financial crisis, the regulations imposed by Dodd-Frank provided Mr. Trump a large source of criticism on the campaign trail. Although Trump has backed off his campaign rhetoric of repealing the Act in its entirety, changes are coming to help spur lending. Financial institution stocks have skyrocketed after Mr. Trump's election in anticipation of Dodd-Frank changes. Even Dodd-Frank's author, **Congressman** Barney Frank, has admitted that the $50 billion asset threshold for the Act's regulatory burden is much too low and should have been set at $125 billion and indexed.[2] Mr. Trump's choice for Treasury Secretary, Steven Mnuchin, has publicly stated that stripping back Dodd-Frank will be his first priority. At the very least, I would look for relief under the Act for certain community banks and smaller regional banks with a goal toward spurring loan growth to individuals and small business. However, I would expect strong political pushback toward much relief of the regulatory burdens to large financial institutions. In particular, my sense as a public securities lawyer is that the "say on pay" rules adopted by the SEC as part of Dodd-Frank and which require shareholders to vote on executive compensation at least every three years are viewed as a positive by investors.

3. **Significant Revisions to Obamacare.** Throughout his presidential campaign, Mr. Trump consistently pledged that he would repeal Obamacare once elected. Mr. Trump's nomination of Congressman Tom Price as his Secretary of Health and Human Services signals that Mr. Trump will attempt to follow through on this campaign promise. Congressman Price, a six-term congressman from Georgia who is an orthopedic surgeon, has been a critic of Obamacare since its **outset** and has introduced bills to replace Obamacare in each year since 2009. Congressman Price's current plan, the Empowering Patients First Act, would terminate Obamacare and set up an entirely new system based upon age-based tax credits instead of existing subsidies for those not covered by Medicare, Medicaid or employer-sponsored plans, incentives to contribute to health savings plans, federal grants to states for subsidies of high-risk populations and elimination of restrictions of sales of insurance plans across state lines. However, while the repeal, if part of a budget procedure called reconciliation, would only require 51 votes, the Senate Republicans may need, and seem to want, 60 votes for any replacement. It is believed that the transition period needed for the transition to a new plan could be two to three years. In the short term, look for significant amendments and non-funding of certain portions of Obamacare in its current form.

4. **Supreme Court Shift to the Right.** In his first 100 days, President Trump will be able to nominate a replacement for Justice Scalia, which will undoubtedly begin a shift of the Supreme Court to the right. Additionally, two justices that lean "left," Justice Ginsberg and Justice Breyer, are 83 and 78, respectively. Justice Kennedy, who is seen as the moderate justice, is 80. Hence, from an actuarial perspective, President Trump may have an opportunity to shift the ideological center of the Supreme Court to the right. It is definitely something to monitor during Trump's term, as the impact could be generational.

In the upcoming weeks, I'm sure that Trump's policies will come into focus as he rounds out his Cabinet. However, if Trump's first 100 days is anything like the last 100 days, it will make for good ratings for Fox News and CNN, perhaps better than *The Apprentice*.

Finally, with respect to that wall on the Mexican border to be paid for by Mexico, Tommy Flanagan's voice is ringing in my head: "Yeah, Yeah … that's the ticket." Have a very happy holiday season!

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[1] Peter Baker, *'Trump Effect' is Already Shaping Events Around the World*, N.Y. Times, Nov. 28, 2016, at A21.
[2] Jeff Cox, *Why It Won't Be Easy for Trump to Repeal Dodd-Frank*, CNBC.com (November 21, 2016, 2:04 PM).