

# **The paradox of unity and division: an unprecedented political landscape leads to high policy uncertainty**

Insurance Governance  
Leadership Network  
February 2017



**Tapestry**  
Networks





## The paradox of unity and division: an unprecedented political landscape leads to high policy uncertainty

The recent US election gave Republicans control of the presidency and both houses of Congress for the first time in a decade. Some pundits have suggested that this consolidation of power will clear the way for a pro-business Republican agenda. Others, including IGLN network participants, have cautioned that a clear agenda has not yet emerged from Republicans across the branches of government, and that even with control of the legislature, Republicans might not be able to act freely in the face of stiff opposition. One director drew specific attention to the tension between President Trump's populist and pro-business rhetoric: *"Who will preside? The populist so many voted for, or the man who ran on business experience? Which president will govern?"*

On December 6, 2016, IGLN participants met in New York to exchange views on the changing US political landscape and the potential effects on US commercial markets and the insurance sector. This *ViewPoints*<sup>1</sup> synthesizes key insights emerging from the meeting and related discussions and centers on four themes:

- **The incoming administration defies prediction**
- **Congress, the president, and federal agencies will move to reduce regulation in key areas**
- **Stiff opposition may limit movement on domestic policy issues**
- **Significant policy developments loom for insurers**

### The incoming administration defies prediction

*"Expect the unexpected. The anxiety, anger, or fear that fueled the election did not end on election night. Whatever rulebook you thought this all played by is going into the shredder. Plan for unexpected events and curveballs,"* advised a participant. He added, *"Who will exploit the uncertainty the best? The left? The right? My bet is the one to exploit it the best is the president. It might mean governing against both parties. He might be the first truly independent president."* In the time since the IGLN meeting, cabinet appointments and confirmation hearings have begun. Many appointees have taken positions at odds with President Trump, fueling speculation that the administration may not have clear and coherent policy positions on many issues.

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## Congress, the president, and federal agencies will move to reduce regulation in key areas

Participants agreed that the new administration will be more responsive to concerns raised by the business community and will shift the regulatory pendulum towards less regulation, likely rolling back reforms enacted after the financial crisis. On January 23, at a meeting with leading CEOs, President Trump promised to “cut regulations by 75%, maybe more.”<sup>2</sup> Approximately one week later, President Trump issued an executive order directing the Secretary of the Treasury to review the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) as a first step in scaling back the law.<sup>3</sup> Just weeks into the new legislative session, both houses of Congress appear poised to limit the ability of administrative agencies to enact broad, and potentially expensive, regulations. The House has already passed two significant bills. Describing HR 26, Hoover Institution scholar Richard Epstein said it would provide an additional check on regulatory agencies by “[giving] Congress a final say on regulations with an estimated cost over \$100 million through a mandatory up-or-down vote before they go into effect.”<sup>4</sup> Another, HR 5, would “end judicial deference to bureaucrats’ statutory and regulatory interpretations,”<sup>5</sup> require agencies to choose the lowest-cost rulemaking alternatives, and create additional opportunities for public input into rulemaking.<sup>6</sup>

Several participants observed that new appointments can be as powerful as legislation in shaping the form of regulations. *“Personnel is policy. The most immediate change will come from new personnel at agencies like the [Securities and Exchange Commission] and Treasury,”* said one participant. Steven Mnuchin, nominee for Secretary of the Treasury, is already indicating the changes he would like to make. In a reply to the Senate Finance Committee, he wrote, “I believe in a regulatory framework that is determined by complexity and activity, not simply size.” He also endorsed a “comprehensive review” of the powers and operations of the Financial Stability Oversight Council.<sup>7</sup>

## Stiff opposition may limit movement on domestic policy issues

*“Even so, the system is designed to be slow moving, and significant change may be unlikely,”* said one participant, adding, *“I don’t think you will see ‘comprehensive’ or ‘complete’ anything. It will be done in stages.”* Participants agreed that groups opposed to these changes are likely to become more active and thought it likely that cleavages within the Republican Party, for example between pro-business and populist elements, will emerge. Meanwhile, within the Democratic Party, *“the Elizabeth Warren wing is not going away,”* said one director. Another participant said, *“There are only 52 Republican senators. It takes 60 to tango. It usually takes 62 for the tough votes. Trump will be tempered by realities. The system is designed to be hard to move legislation. There is a debate on whether to get rid of the filibuster, but there isn’t enough Republican support to do that.”*

Furthermore, new political conflicts may emerge. *“The new battleground is New York and California and their attorneys general,”* said one director. At the state level, corporations may expect some state agencies and attorneys general to become more active if they perceive unfavorable federal developments. Paul Nolette, a political scientist, predicted, “Democratic attorneys general are going to be very active, suing a number of regulatory agencies. They will be prepared to use a kitchen sink strategy.”<sup>8</sup> Similarly, one executive suggested that

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cash-starved localities would take action to maintain revenue in the event of tax cuts. Such actions would cause state regulatory and legal environments to diverge, leading to greater challenge within bodies like the National Association of Insurance Commissioners and in international negotiations. Some participants have also suggested that while more favorable regulation in some states can be helpful, greater regulatory divergence among states or between the United States and other authorities can make it harder and more expensive to operate overall.

### Significant policy development loom for insurers

Insurers identified the following policy areas to monitor in the coming months:

- **US capital standards and requirements for systemically important financial institutions (SIFIs).** Some pundits predict changes to Dodd-Frank could affect capital standards development through the Federal Reserve, SIFI designations, and the roles of state regulators, the Federal Reserve, the Federal Insurance Office, and the Financial Stability Oversight Council. Ted Nickel, president of the National Association of Insurance Commissioners, recent said that the NAIC would advocate repeal of the SIFI designation process, and noted, “I think monitoring solvency of insurance companies is best done at the state level.” He continued, “I don’t think the federal labeling of insurance companies [as systematically important] through the FSOC process has been particularly helpful given the fact that there’s no off ramp.”<sup>9</sup>
- **Conduct and consumer protection regulation.** A variety of independent factors, including high-profile incidents like the sales fraud at Wells Fargo, are pushing conduct and consumer protection up the regulatory agenda. Insurers may find relief as the new administration begins to act on its promise to scrap the Department of Labor’s retirement advisory rule. On February 3, President Trump signed an executive memorandum directing the Secretary of Labor to review the so-called “fiduciary rule” to ensure the rule will not reduce access to retirement products or advice, will not result in disruptions in the industry that could harm investors, and is not likely to increase litigation or retirement product prices. If any of these adverse conditions are met, the Secretary is directed to rescind or revise the rule.<sup>10</sup> In response to this review, the Department of Labor is exploring options to delay implementation of the rule, currently scheduled for April.<sup>11</sup> Despite these developments, many participants agreed that politicians are unlikely to reverse the tide of what one director called “consumerism.” This director said, “*It is all about protecting the little guy. Anything that is better for the consumer, politicians will get behind.*”
- **Relationships among regulatory authorities.** To the extent US regulatory responsibilities are adjusted, there may be a change in the balance of power among key agencies. There is also more to understand about how US rules and supervisors will interact with the evolving global insurance capital standard. Going forward, US negotiators may have different rules of engagement in international processes, which could affect the progress and outcomes of various international efforts.

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*“What is happening now is broader than conduct. It is consumerism. It is all about protecting the little guy. Anything that is better for the consumer, politicians will get behind.”*

- Director

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- **Global operations and trade.** The United States is entering uncharted territory, led by the first president in modern memory who is unabashedly opposed to free trade. In the first several days of his administration, President Trump has withdrawn from the Trans-Pacific Partnership, threatened tariffs on goods from Mexico and China, proposed renegotiating the North American Free Trade Agreement, and continued to pressure US companies to stay in the United States. A participant said, *“Antiglobalization is a big issue for insurance because we set up operations where the business is and become part of the local economy. I don’t think the pushback on trade will impact us, but nationalism may.”* Companies must be prepared to respond to such potential challenges as an increase in regulations against foreign ownership, changes in national corporate tax structures, possible repatriation of assets, significant local collateral or labor requirements, and limitations on the free flow of workers. On the issue of labor mobility, a director raised concerns about getting visas for employees from certain countries: *“For companies operating on a global basis, this is a big operating-model issue.”*

Insurers also intend to take a close look at US tax and immigration policy, as well as US international relations, in the coming months.

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Pundits and insurers agree that it is too soon to predict outcomes from the Trump presidency. The political environment is likely to continue to be uncertain for the foreseeable future. One director said, *“Betting on the outcomes is a fool’s bet. The safe bet is it won’t go as anyone predicts.”* Accordingly, boards should anticipate continued ambiguity and volatility in the political environment and in the reactions of markets.

## About the Insurance Governance Leadership Network (IGLN)

The IGLN addresses key issues facing complex global insurers. Its primary focus is the non-executive director, but it also engages members of senior management, policymakers, supervisors, and other key stakeholders committed to outstanding governance and supervision in support of building strong, enduring, and trustworthy insurance institutions. The IGLN is organized and led by Tapestry Networks, with the support of EY. *ViewPoints* is produced by Tapestry Networks and aims to capture the essence of the IGLN discussion and associated research. Those who receive *ViewPoints* are encouraged to share it with others in their own networks. The more board members, senior management, advisers, and stakeholders who become engaged in this leading edge dialogue, the more value will be created for all.

## About Tapestry Networks

Tapestry Networks is a privately held professional services firm. Its mission is to advance society's ability to govern and lead across the borders of sector, geography, and constituency. To do this, Tapestry forms multi-stakeholder collaborations that embrace the public and private sector, as well as civil society. The participants in these initiatives are leaders drawn from key stakeholder organizations who realize the status quo is neither desirable nor sustainable, and are seeking a goal that transcends their own interests and benefits everyone. Tapestry has used this approach to address critical and complex challenges in corporate governance, financial services, and healthcare.

## About EY

EY is a global leader in assurance, tax, transaction, and advisory services to the insurance industry. The insights and quality services it delivers help build trust and confidence in the capital markets and in economies the world over. EY develops outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, EY plays a critical role in building a better working world for its people, for its clients and for its communities. EY supports the IGLN as part of its continuing commitment to board effectiveness and good governance in the financial services sector.

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## Appendix: Discussion participants

On December 6 in New York, Tapestry and EY hosted an IGLN meeting on the technological transformation of insurance and the evolving US political landscape. In the meeting and in preparation for it, we conducted numerous conversations with directors, executives, regulators, supervisors, and other thought leaders. Insights from these discussions informed this *ViewPoints* and quotes from these discussions appear throughout.

The following individuals participated in these IGLN discussions:

### **AIG**

- Terry Stone, Regulatory and Public Policy Committee Chair

### **Allianz**

- Tom Wilson, Chief Risk Officer

### **Aviva**

- Angela Darlington, Chief Risk Officer

### **Chubb**

- Michael Atieh, Audit Committee Chair
- Theodore Shasta, Non-executive Director

### **The Hartford**

- Teresa Roseborough, Non-executive Director

### **MetLife**

- Marty Lippert, Executive Vice President, Global Technologies and Operations
- Stan Talbi, Executive Vice President, Chief Risk Officer

### **Prudential Financial**

- Nicholas Silitch, Chief Risk Officer and Senior Vice President

### **QBE Insurance Group**

- Marty Becker, Chairman of the Board

### **Sompo Japan Nipponkoa**

- Jan Carendi, Senior Adviser to the CEO

### **Sun Life Financial**

- Marianne Harris, Management Resources Committee Chair

### **The Travelers Companies**

- Alan Beller, Non-executive Director

### **USAA**

- Eileen Collins, Vice Chair, Risk Committee
- Torben Ostergaard, Chief Risk Officer

### **US Chamber of Commerce**

- David Hirschmann, President and CEO, Center for Capital Markets Competitiveness

### **EY**

- Dave Hollander, Global Insurance Advisory Practice Leader
- Nicole Michaels, Principal – Insurance Advisory
- John Santosuosso, Global Insurance Assurance Leader

### **Tapestry Networks**

- Leah Daly, Principal
- Colin Erhardt, Associate
- Peter Fisher, Partner

## Endnotes

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<sup>1</sup> *ViewPoints* reflects the network's use of a modified version of the Chatham House Rule whereby names of network participants and their corporate or institutional affiliations are a matter of public record, but comments are not attributed to individuals, corporations, or institutions. Network participants' comments appear in italics.

<sup>2</sup> Bob Bryan, "[Trump: We're Going to 'Cut Regulations by 75%' and Impose a 'Very Major Border Tax.'](#)" *Business Insider*, January 23, 2017.

<sup>3</sup> President Donald Trump, "[Core Principles for Regulating the United States Financial System.](#)" *Executive Order*, February 3, 2017.

<sup>4</sup> Richard Epstein, "[A Revolution in Administrative Law.](#)" *Ricochet* (blog), January 17, 2017.

<sup>5</sup> Nick A. Dantonio, "[Congress May Take a Stab at Limiting Judicial Deference.](#)" *Nickel Report* (blog), January 12, 2017.

<sup>6</sup> A one-page summary of HR 5, made available by the US Congress, is available [here](#).

<sup>7</sup> Ryan Tracy and Richard Rubin, "[Treasury Nominee Steven Mnuchin Says Bank Regulation Should Be Tailored to Activity.](#)" *Wall Street Journal*, January 24, 2017.

<sup>8</sup> Alan Greenblatt, "[To Battle Trump, State Democrats Will Use GOP's Own Tactics.](#)" *Governing*, January 18, 2017.

<sup>9</sup> Susanne Sclafane, "[NAIC Leader Says Insurer Systemic Risk Process is Unnecessary.](#)" *Insurance Journal*, January 26, 2014.

<sup>10</sup> Rachael Levy, "Here's a Copy of the Executive Order Trump Signed on Americans' Retirement Money," *Business Insider*, February 3, 2017.

<sup>11</sup> US Department of Labor, "[US Department of Labor to Evaluate Fiduciary Rule.](#)" *News Release*, Release No. 17-0184-NAT, February 3, 2017.