

President-Elect Trump Making Capital Great Again?

Mary Jo White is stepping down this month as Chair of the Securities and Exchange Commission (“SEC”), and the new Trump appointee Jay Clayton, a Wall Street lawyer, could result in a shift back to a more helpful SEC. Restoring the U.S. public markets from the uncertainty of ever expanding regulations should result in a more active public market in 2017 and reverse the recent flight of capital to the Canadian public markets. Perhaps, part of the U.S. market’s rise since the election of Mr. Trump anticipates this new environment.

But why is this change even relevant for those companies who are private and do not intend to become public? Greater liquidity in the public markets invariably impacts private companies’ ability to raise capital. If the only viable exit strategy for a private company is a merger or sale, rather than an initial public offering or shell merger, those willing to fund a private company are less likely to do so. Having a vibrant public market improves the funding potential of private companies. In fact, in my opinion, a strong public market provides greater incentives to capital raising than all of the rules Congress has recently enacted to make capital raising easier. This in turn, in my experience, creates a better market for mergers and acquisitions as well.

Since the Dodd-Frank Act was enacted in 2010, the SEC has been focused on enforcement of this Act against public companies. With the appointment of Mary Jo White as Chair of the SEC in April 2013, President Obama radically shifted the historic function of the SEC from assisting public companies with compliance to pursuing them with enforcement. A record number of enforcement claims were brought under the tenure of Chair White. Her theory was to punish even the smallest violation to deter a “culture of misconduct.” Her administration had a chilling effect on becoming a public company, particularly the smaller ones. In spite of an improving economy, the year 2016 saw fewer initial public offerings than any year since 2006. My hope is that 2017 starts a new trend upwards in the public markets and in turn creates a more active market for mergers and acquisitions.



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