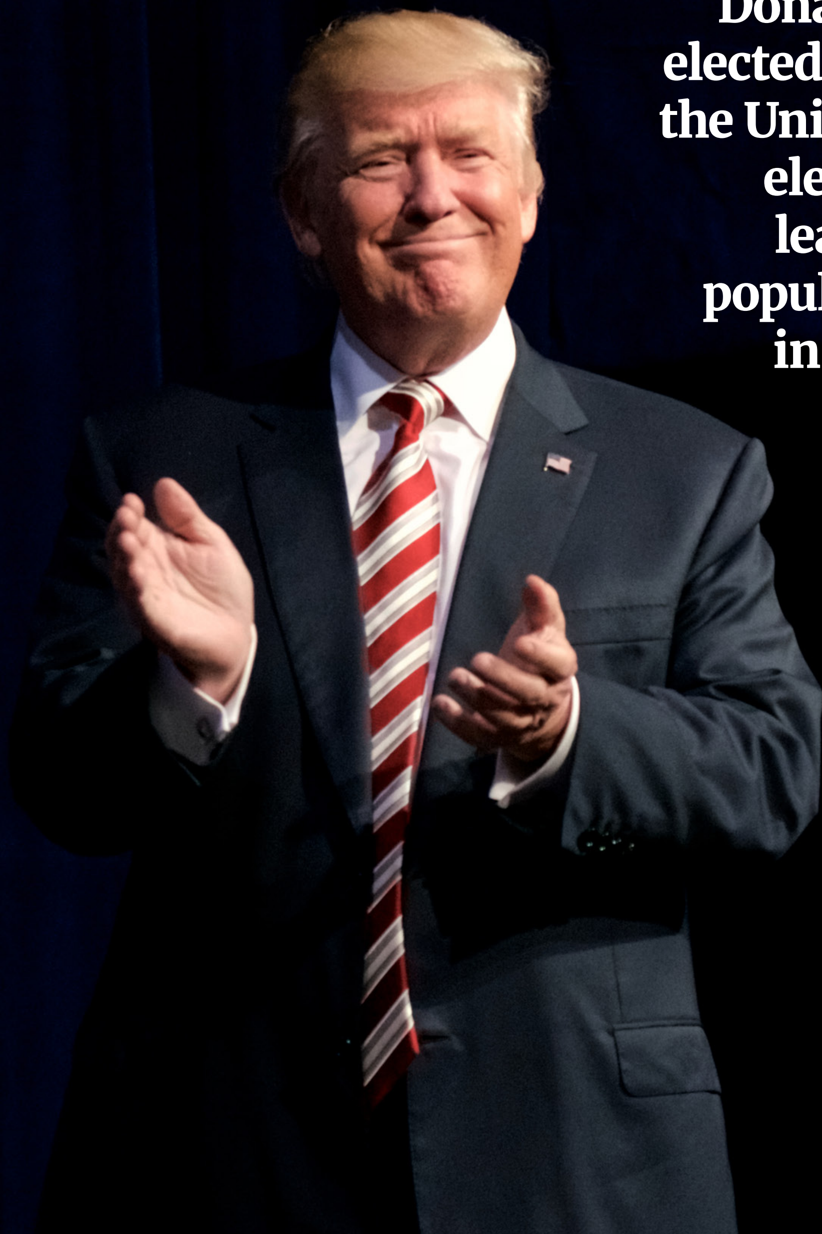
2016 U.S. General Election Briefing

November 10, 2016



Donald J. Trump has been elected the 45th president of the United States. President-elect Trump captured at least 47.5 percent of the popular vote and 279 votes in the Electoral College.

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In a victory that defied the pundits and polls, Trump harnessed voters' dissatisfaction with the status quo and swept Florida, Iowa, Michigan, Ohio, Pennsylvania, and Wisconsin—six key states that voted for President Obama's reelection in 2012. The close popular vote, which Hillary Clinton ultimately won, belies a clear mandate, and Trump will take the Oval Office presiding over a political landscape sharply divergent from the one that ushered President Obama into office eight years ago. In the aftermath of the hard-fought campaign, President-elect Trump faces a divided nation with deep ideological fissures that need measured and steady leadership in order to heal.

With Republicans poised to assert complete control over the Congress and in the White House, companies seeking to engage inside the Beltway will confront a new political reality. Indeed, from healthcare to energy to financial services, the rules of political engagement are being rewritten. Companies must be nimble enough to adapt to a shifting 2017 political and regulatory environment, and need to make a compelling case to the thousands of new executive-branch appointees who will soon populate the Trump administration.

To help companies navigate the unpredictable and unanticipated landscape they now face, Brunswick analyzed the key business-critical issues that are likely to rank high on President-elect Trump's agenda during his first 100 days in office.

Big issues, big stakes

1. M&A and Antitrust Enforcement
2. Corporate Tax Reform
3. Healthcare
4. Financial Services
5. Energy
6. TPP, TTIP, and Trade
7. Foreign Policy

Working with Congress

President-elect Trump will take office with the Republican Party fully in control of the executive and legislative branches of the federal government for the first time since 2007. In the House of Representatives, Republicans retained control of 241 seats to the Democrats' 193. Though Democrats appeared to be on the verge of wresting control of the Senate from the GOP earlier this month, that chamber remains with Republicans, who (as of this writing) will hold 51 seats in the 115th Congress.

Importance of rules and procedure. Although the president-elect will enter the Oval Office with Republican control of both houses of Congress, that control does not assure an easy or certain path for his legislative agenda. Because Republicans do not control the 60 votes necessary to overcome a filibuster from Democrats in the Senate, Trump will need to work across the aisle to move his agenda forward in that chamber. He will also have to win over those members of his own party, including Senator Jeff Flake (R-AZ) and Senator Ben Sasse (R-NE), who publicly opposed the president-elect during the election. On the Democratic side of the aisle, Trump will face progressive stalwarts such as Senator Elizabeth Warren (D-MA) and Senator Bernie Sanders (D-VT), who will use the Senate's procedures—including the filibuster—to their advantage in an effort to protect Democratic priorities.

On hot-button issues such as the repeal of the Affordable Care Act and tax reform, where a Democratic filibuster is almost certain to occur, the president-elect may turn to the budget reconciliation process in order to push his agenda through the Senate. Reconciliation is a procedure to fast-track certain tax, spending, and debt limit legislation. Reconciliation bills require only 51 votes to pass and cannot be filibustered. Republicans have successfully used reconciliation in the past, including in 1996 during the welfare reform debate, and in 2001 and 2003 to enact President Bush's signature tax cuts.

Possible leadership realignment. In the House, Trump faces a different set of challenges, starting with whether to support current Speaker of the House Paul Ryan (R-WI) for reelection as Speaker. Conservatives in the Republican caucus, especially Trump allies, angered by Ryan's lukewarm support for their candidate, may jump at the opportunity to reject his bid for a second term if encouraged to do so by the president-elect.

Trump may also choose to deploy the Vice President-elect Michael Pence as his emissary to House Republicans. A former member of House leadership, Pence enjoys a personal friendship with Speaker Ryan and could be helpful in ensuring coordination between the Oval Office and Capitol Hill, despite the president-elect's and Speaker's divergent governing styles.

These personal dynamics will play out alongside conversations about the Republican legislative agenda for next year, and how Republicans should capitalize on their control of the federal government. It is an open question whether President-elect Trump will push for passage of his own slate of campaign priorities or instead adopt the House Republican "A Better Way" agenda.

Style of governing. Indeed, the issues that Trump chooses to advance in his first 100 days will offer insight into how he plans to govern—whether he will seek out opportunities for bipartisanship (*e.g.*, greater investment in infrastructure) or take a partisan stance on issues important to his political base (*e.g.*, building a wall along the Mexican border), even if it means facing a Democratic filibuster in the Senate and seeing progress on his agenda slow to a crawl.

Trump may also find himself following President Obama's playbook and governing through executive orders to implement large swaths of his agenda if it becomes stalled in the Senate. Such orders are legally binding on federal departments and agencies, and are issued on the basis of enforcing existing law. The Obama administration has used executive orders to bring about change on issues as varied as climate change and environmental sustainability and protections against workforce discrimination. While Trump criticized Obama's use of executive orders during the campaign, he has also pledged to use them himself.

The issues that matter

With much left unsettled in this new political normal, here is our preliminary take on the business-critical issues that will matter most in 2017, and their likely fates under the Trump administration and Republican-controlled Congress.

M&A and Antitrust Enforcement

The Obama legacy. Trump will assume the presidency following a period of aggressive regulatory enforcement by the Obama administration. In remarks before the American Bar Association, U.S. Attorney Loretta Lynch cautioned against the "unprecedented swell of mergers coursing through the U.S. economy." *Crain's Chicago Business* recently reported that in response to this high volume of M&A activity, the Obama administration opposed a greater percentage of mergers than any president in the past 35 years. According to The Street, under President Obama, the annual challenge rate—how often the Department of Justice (DOJ) or the Federal Trade Commission (FTC) sues to stop a transaction or imposes conditions—has hovered around three percent, a two percent jump from the Reagan years.

Trump's unclear intentions. An April 2016 Intralinks survey indicated that two-thirds of global banking professionals believed Donald Trump would have a negative impact on deal-making if elected president. But despite this strong perception, it is unclear how rigorously Trump will enforce the nation's antitrust laws.

Trump was a litigant in several antitrust actions, including defending an enforcement action brought against him by the Federal Trade Commission and Department of Justice in 1988. While these experiences have almost certainly colored his view of antitrust law, Trump provided few clues on the campaign trail about his approach to antitrust enforcement, save for his opposition to the recently announced AT&T-Time Warner transaction. Trump said it is "a deal that we will not approve in my administration because it's too much concentration of power in the hands of too few."

Appointing regulators. But despite this stated opposition, whomever the president-elect installs as the head of the Department of Justice's Antitrust Division and at the Federal Trade Commission will have the ultimate authority over such enforcement decisions. And with pro-business Republican Chris Christie a strong contender to be the next U.S. attorney general—and the ease with which Trump has pivoted from other established policy positions—companies should not necessarily count on another four years of aggressive enforcement of the nation's antitrust laws. Kellyanne Conway, Trump's campaign manager, signaled Trump's aversion to regulation on CNBC, saying he would move to lift onerous regulations.

Corporate Tax Reform

Lowering the tax rate. While light on specific details, President-elect Trump has proposed several reforms to corporate taxation, including lowering the business tax rate from 35 percent to 15 percent and eliminating the corporate alternative minimum tax. He has called for the closing of corporate tax loopholes (including carried interest), with the exception of the Research and Development Tax Credit.

For their parts, Republicans on the Hill have proposed reform plans of their own to lower the corporate tax rate. House Ways and Means Committee Chairman Kevin Brady (R-TX) plans to pursue tax-overhaul legislation in 2017 with the support of Speaker Ryan. With President-elect Trump's consent, congressional Republicans may choose to use budget reconciliation to push through tax reform, with or without Democratic support.

Repatriation and made-in-America incentives. During the campaign, Trump also outlined several reforms to protect U.S. manufacturing and repatriate corporate profits held overseas. Specifically, Trump proposed that "firms engaged in manufacturing in the U.S." would be allowed to expense capital investment and lose the deductibility of "corporate interest expense." Additionally, Trump's tax plan calls for "a deemed repatriation of corporate profits held offshore at a one-time tax rate of 10 percent."

Inversions. With regard to inversions, Trump has said a lower rate will render corporate inversions unnecessary by making America's tax rate "one of the best in the world," likely indicating his administration will adopt a wait-and-see approach to inversions and other global finance positioning techniques while seeking corporate tax reform.

Healthcare

The Affordable Care Act. An effective repeal of the Affordable Care Act (ACA, or Obamacare) is both high on Trump's agenda and likely to occur. President-elect Trump stated just last week that he will ask Congress to repeal the healthcare law on his first day in office. After the election, Senate Majority Leader Mitch McConnell (R-KY) said that repealing the law was "pretty high on our agenda." Even though the Republicans lack the 60 Senate votes needed for an outright repeal, they could use reconciliation—a budget procedure that requires a simple majority to pass—to dismantle key provisions of ACA, including the individual mandate, required coverage for pre-existing conditions and an excise tax on medical devices.

Though the repeal of the healthcare law is likely, the question is whether it is politically viable for Congress to strip 22 million Americans of their insurance coverage, according to a Congressional Budget Office estimate, without alternative legislation. To that end, Trump has called on Congress to lead on developing a healthcare reform alternative. House Speaker Paul Ryan (R-WI) outlined a Republican proposal this summer that included longstanding GOP ideas, such as a tax credit to help people afford coverage, private competition to Medicare, and a cap on government Medicaid payments. Key details, such as funding the tax credit, have yet to be hammered out, and it is unclear whether a draft bill would receive broad support even among Republicans.

Drug pricing. During his campaign, Trump was critical of the pharmaceutical industry. In fact, he agreed with Clinton on a couple of proposals that would undermine the industry's pricing power. Specifically, Trump has said that he would allow Medicare to negotiate drug prices directly with pharmaceutical companies and allow the import of drugs from outside the U.S., adopting long-held Democratic positions. Next year, the Prescription Drug User Fee Act is up for renewal, and the law's "must-pass" status has historically made it a vehicle for pushing drug policy changes. The Trump White House may use the occasion to push through similar consumer-friendly proposals.

On the other hand, Trump was noticeably silent over the past year as a number of drug pricing scandals emerged, including Turing, Valeant, and Mylan. By contrast, Clinton proposed restricting dramatic price hikes on lifesaving medications and sought to challenge "pay for delay" schemes, where companies buy generic drug patents to keep them off the market. Given his mixed rhetoric, U.S. biotech stocks may owe their post-election rally more to Clinton losing than Trump winning.

Financial Services

President-elect Trump did not unveil a detailed policy proposal outlining his relevant financial services positions during the campaign. Consequently, the financial services industry faces a measure of uncertainty in the months ahead. That said, Trump has signaled an appetite for decreased regulations, higher interest rates, and increased protectionism that will undoubtedly affect the markets. Even though Trump will assume office with a Republican-controlled Congress, diehard progressive Democrats such as Senators Elizabeth Warren (D-MA), Bernie Sanders (D-VT), and Sherrod Brown (D-OH) will use the filibuster rule to fight GOP efforts at every turn to repeal or weaken consumer-focused laws.

Dodd-Frank. Trump has repeatedly stated his intention to fully repeal or roll back the Dodd-Frank Wall Street Reform and Consumer Protection Act enacted in response to the 2008 financial crisis. While never specifically referencing 2010 reform law by name, Trump's economic plan includes a frank promise to "reduce anti-growth regulations." Given that Speaker Ryan unveiled his own proposal to scale back Dodd-Frank, which is reviled by many Republicans, expect quick action to weaken its key provisions at a minimum. Areas of focus for the new administration are likely to include restructuring the Consumer Financial Protection Bureau to replace its single director with a bipartisan commission and to make its appropriation subject to Congressional approval; raising the threshold for tougher bank regulation above the current $50 billion asset level, and requiring all financial regulatory agencies to abide by heightened cost-benefit analysis, which critics have argued are designed to slow or halt the rule-writing process.

DOL Fiduciary Rule. Trump is likely to target the recently enacted Department of Labor (DOL) fiduciary rule, which has been criticized as government overreach that penalizes middle- and lower-income savers, small businesses and investment advisors. Efforts from Representative Jeb Hensarling (R-TX), chairman of the House Financial Services Committee would suggest that, despite Trump's populist and anti-Wall Street tenor on the campaign trail, we may see a swift move to halt enactment of the fiduciary rule before it goes into effect in April.

Glass-Steagall Reform. In late October, President-elect Trump expressed his desire for the implementation of a "21st century" version of the 1933 Glass-Steagall. The law, which mandated the separation between commercial and investment banking, was repealed under President Clinton in 1999. This view breaks with traditional Republican orthodoxy and is primarily supported by Democrats, like Senator Warren (D-MA).

Carried interest. The president-elect has called for an end to the preferential tax treatment of "carried interest"—a position he actually shares with Secretary Clinton. In anticipation of increased scrutiny on carried interest, the private equity industry's trade group renamed itself the "American Investment Council" and even hired former Speaker of the House John Boehner's chief of staff, Mike Sommers, to serve as its president and CEO. Although Trump favors eliminating carried interest and taxing it as ordinary income, it's unclear if hedgefund, private equity, and venture capital fund managers would ultimately end up paying higher personal income taxes under his administration, or if private equity funds' structures would change significantly given that his tax plan also calls for narrowing the gap between capital gains and income taxes.

Energy

President-elect Trump's win represents a major victory for fossil-fuel energy companies, especially coal producers. Trump has vowed to roll back regulations on the industry and withdraw from the Paris Agreement, which calls for sharply reducing emissions from the nation's coal-burning power plants. He has also vowed to overturn President Obama's rejection of the Keystone Pipeline and undo restrictions on oil production on public lands.

Paris Agreement. Trump's win jeopardizes one of President Obama's top diplomatic achievements. Under the Paris Agreement, the Obama administration pledged to cut U.S. greenhouse-gas emissions up to 28 percent from 2005 levels by 2025. The U.S. pledge was widely seen as critical to securing the participation of the world's other leading emitters, especially China. While President-elect Trump doesn't have the power to unilaterally "cancel" the Paris Agreement, as he has pledged, his administration could refuse to attend summit meetings or to enforce Mr. Obama's emissions-reduction plan, potentially giving other nations cause to rethink their own pledges.

The Environmental Protection Agency. Trump has pledged to "get rid of [the EPA] in almost every form. We're going to have little tidbits left but we're going to take a tremendous amount out." Though ambitious, this is improbable. His choice for administrator of the agency will signal how much restructuring and enforcement is likely to occur at the department.

U.S. waterways. Trump has said he would rescind new EPA rules that clarify which waterways the EPA can protect from development under the Clean Water Act.

Oil and gas production. Trump has said he would lift any ban on oil and gas production on federal lands.

Keystone Pipeline. Trump has said would approve the Keystone Pipeline, but also that he wants "a piece of the profits."

OPEC. Trump has said of OPEC that the U.S. "will become and stay independent of any need to import energy from the OPEC cartel," adding, "We don't deal with them. We'll handle them just fine."

Alternative energy. Trump has sharply criticized the wind industry's impact on wildlife, alleging that windmills kill eagles and other birds. Although he has promised to continue a federal mandate that requires oil refiners to blend ethanol into gasoline, he has been skeptical of federal subsidies for other forms of alternative energy.

TPP, TTIP and Trade

TPP. For all intents and purposes, the Trans-Pacific Partnership (TTP), a cornerstone of the Obama administration's pivot to Asia, all but died with the election of Donald Trump. President-elect Trump, who vehemently opposed TPP and similar trade deals during the campaign, will likely continue to oppose the trade agreement while in office. Whomever Trump selects as his choice to be U.S. Trade Representative will provide an early indication of how aggressively the administration will address free trade. President-elect Trump has stated both in speeches and in written policy statements that he will "appoint tough and smart trade negotiators to fight on behalf of American workers," a comment that could carry a great deal of weight in the global business landscape. Given the absence of a regional agreement and Trump's strong desire to overhaul how the U.S. trades with China, anticipate that Asian countries will gravitate toward the Chinese market and could become more reliant on that country for leadership in and around the South China Sea.

TTIP. Equally in peril is the fate of the Trans-Atlantic Trade and Investment Partnership (TTIP). Though less politically fraught than TPP, TTIP has still attracted opposition from both progressive Democrats and Trump-supporting Republicans. Brexit and Britain's likely withdrawal from the European Union have further complicated TTIP negotiations in recent months. Fully a quarter of exports from the U.S. to the European Union go to Great Britain, so its withdrawal from the European market will almost certainly affect the final negotiated agreement. Further complicating matters is the recent fine that the European Union levied against Apple, and its ongoing fight with the Obama administration over corporate taxes—a fight that Trump will inherit when he takes the Oath of Office. This will be an early test for the president-elect on his desire and tolerance for negotiating with foreign leaders.

Protecting jobs and made-in-America manufacturing. In response to the electorate's repudiation of the free trade status quo of the past six decades, watch for President-elect Trump to appeal to working class Americans by making good on his campaign promises to "direct the Secretary of Commerce to identify every violation of trade agreements a foreign country is currently using to harm our workers, and also direct all appropriate agencies to use every tool under American and international law to end these abuses." We expect that this policy will disproportionately affect U.S. technology companies and others that manufacture products abroad and sell them on American soil—a move that will put Trump at odds with Silicon Valley, but help shore up his base.

On the campaign trail, President-elect Trump took a hard line against NAFTA, often calling it "the worst trade deal ever." Looking forward, Trump has called for an immediate renegotiation of NAFTA to better benefit American workers and promised to reexamine all existing trade agreements.

Foreign Policy

China. President-elect Trump's victory has raised important questions about the future of the United States' relationship with China, arguably one of the most important bilateral ties in the world. The Trump campaign's stark anti-China, protectionist rhetoric—particularly concerning trade—suggests that the complex, increasingly fraught Sino-American relationship is about to get even trickier.

On the campaign trail, Trump frequently mentioned China as a drain on American jobs, and his campaign website includes a pledge to "use every lawful presidential power to remedy trade disputes if China does not stop its illegal activities." Peter Navarro, an economist focused on China and a Trump policy advisor, has argued that trade imbalances, mainly caused by currency manipulation, are the world's foremost economic issue and has called China "a poster child for this problem." The president-elect has promised to implement sweeping punitive tariffs on Chinese goods and to instruct his choice for U.S. trade representative to bring cases against China in U.S. courts and in the WTO over subsidies.

With the Trans-Pacific Partnership all but dead and the extent to which President-elect Trump will turn the U.S. inward unclear, it is all but assured that China will expand its sphere of economic influence in the South China Sea. Every U.S. President over the last 25 years has found that it's much easier to talk tough about China on the campaign trial than it is to push Beijing around—potentially all the more so now, given Xi Jinping's increasingly assertive regime.

Our guess is that Trump's stance will be moderated once the reality of governing begins to set in, but time will tell.

The Middle East. The Middle East has been a key issue of this presidential campaign and will be one of President-elect Trump's major foreign policy challenges. Trump's inconsistent rhetoric about the region throughout the campaign doesn't offer much in the way of policy certainty, but, as with any new president, his choice of advisors will be crucial in shaping his agenda for the region.

Iran. Trump has railed against the Iran nuclear deal, which he described as "the worst deal ever negotiated," and has said that one of his first priorities as president would be to dismantle it. The terms of the deal, however, are already in motion, as sanctions have been eased, Iran has increased its oil exports, and European and Asian companies have inked new business agreements with Iranian companies. Rather than try to nix a deal that is already in full force, Trump has indicated that he may instead try to renegotiate it. Companies already operating in Iran or looking to enter the market have new concerns as Trump takes office. A slowdown in new business deals with Tehran could follow.

GCC. The Gulf States are firmly opposed to the Iran nuclear agreement and would welcome its dismantling, which could offer an opportunity for Trump to improve ties with these monarchies. However, Trump's stance towards the GCC remains unclear. He has expressed concern that bilateral ties with Saudi Arabia are too one-sided, with the U.S. providing security support to the Kingdom but gaining little in return. Though Trump has voiced support for continuing American alliances in the Gulf, he has also said these countries should provide more for their own defense and help stabilize the region by accepting more refugees.

Syria and ISIS. Trump has favorably remarked on Russia's role in Syria, which closely aligns with Iran's interests in the Middle East. The conflict in Syria and the rise of ISIS have been at the center of foreign policy discussions in the U.S. and Europe, and will continue to perplex policymakers. Trump has spoken out against regime change in the Middle East, which he believes fuels more instability. He has vowed to work with allies to defeat ISIS, but has yet to provide concrete plans for doing so. Domestically, Trump has promised to enact more stringent regulations on Muslim refugees trying to enter the country, which may place added pressure on Europe to bolster their immigration quotas as the crisis continues. Trump has also pledged to increase defense spending by up to 5 percent of current levels in a bid to continue to combat terrorism effectively and counter ISIS.

Winning the odds

Over the past two decades, the U.S. has had several dramatic and historic presidential elections that have substantively transformed global business—and have made "citizens, people and consumers" stakeholders whose voices and actions cut through the clutter and noise.

C-suite leaders and boards who did not understand—or more importantly ignored—the significance of these elections (and other elections globally) missed a rare opportunity to alter their competitive landscape and embrace this new breed of stakeholder.

Companies who do not rapidly adapt to the changing corporate and political landscapes will find themselves at a competitive disadvantage come 2017.

The time is now for corporate boards and C-suite executives to:

- *Reassess the facts, data and assumptions that have informed your public affairs and engagement strategies—because they probably aren't relevant in this new political environment;*
- *Reorder your corporate priorities to take advantage of the new "blank slate" the election offers – allow your stories and perspectives to influence and shape this new landscape;*
- *Recognize that forging new relationships—and letting go of others—will be a continuous and dynamic process for the next 12–24 months. Fresh thinking and new allies will certainly lead to new opportunities;*
- *Redefine their fundamental corporate narratives to more strongly align with the rhetoric and positions of the new—and emerging—leadership across this nation and the globe;*
- *Realign your business ethos towards people rather than markets to take advantage of the evolving Trump administration's goals of jobs, investment and infrastructure.*

Corporations have a unique opportunity to communicate to the Trump administration and leaders on Capitol Hill a vision of and path to what this future can be. We stand ready to help.

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