



MAYER | BROWN

MAYER BROWN INSIDE COUNSEL FORUM:

WHAT YOU NEED TO KNOW IN 2025

MARCH 5, 2025

POST-ELECTION PERSPECTIVES



PARTNER
CONGRESSIONAL INVESTIGATIONS

KIMBERLY HAMM

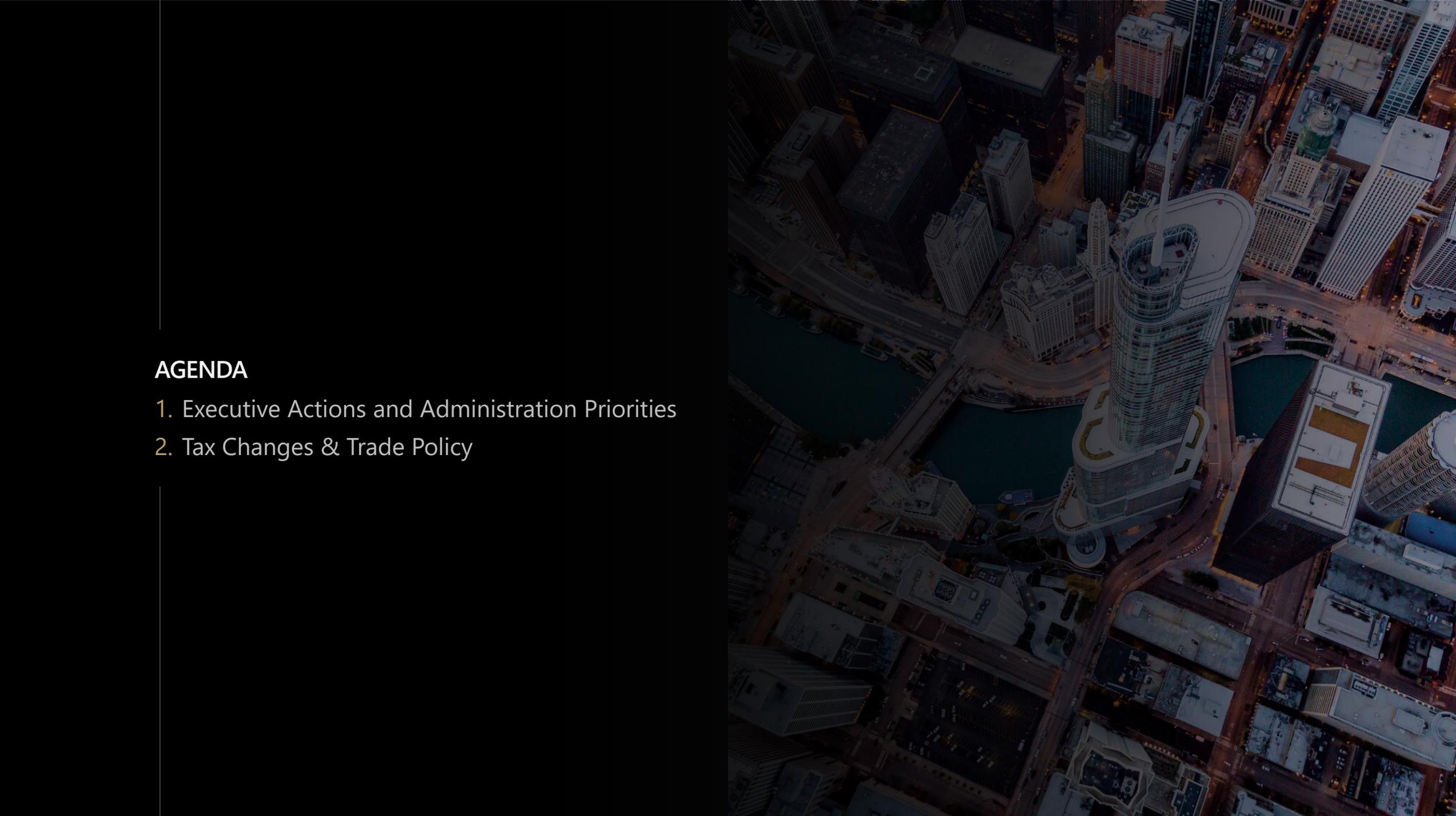
WASHINGTON DC +1 202 263 3163
KHAMM@MAYERBROWN.COM



SENIOR ADVISOR
INTERNATIONAL TRADE

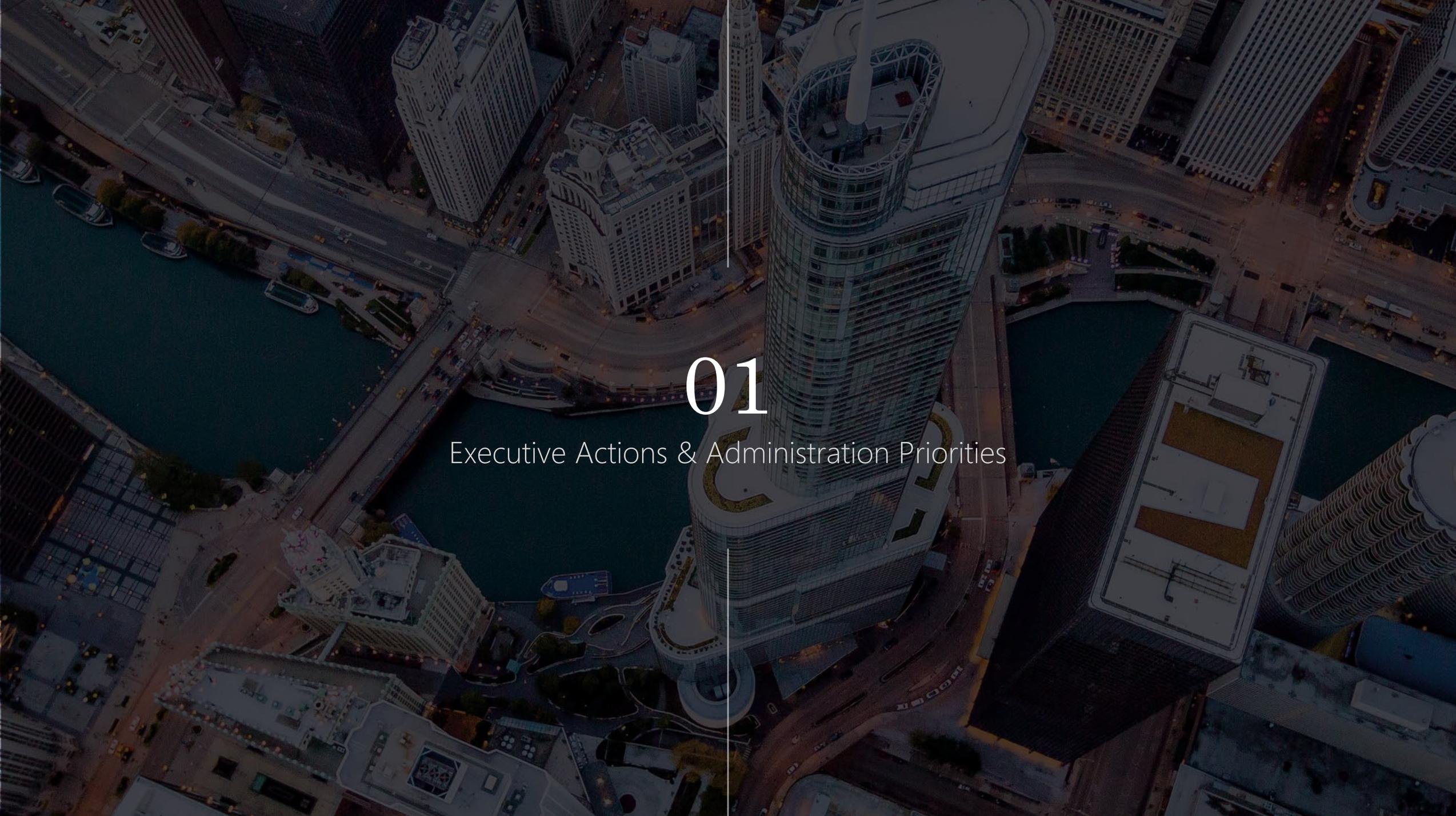
WARREN PAYNE

WASHINGTON DC +1 202 263 3831
KHAMM@MAYERBROWN.COM



AGENDA

1. Executive Actions and Administration Priorities
2. Tax Changes & Trade Policy

An aerial photograph of a city skyline, featuring a prominent skyscraper with a distinctive top section. The image is overlaid with a semi-transparent dark blue filter. Two vertical white lines are positioned on either side of the central text. The skyscraper has a unique, rounded top with a glass-enclosed structure. The surrounding area includes other high-rise buildings, a body of water with several boats, and a network of roads and bridges.

01

Executive Actions & Administration Priorities

Presidential Directives

- Appointments and nominations
 - New agency heads
 - Quick confirmation of key cabinet officials
 - Key staff appointments
- Executive orders and actions
 - Tariffs and trade
 - Spending freeze
 - Regulatory freeze and deregulatory initiatives
 - Immigration
 - Scrutiny of DEI
 - Climate-related Biden orders revoked
 - Artificial intelligence
 - Crypto
 - Federal workforce changes
 - Authority over independent agencies; sidelining of CFPB
 - America First Investment Policy
 - Numerous court challenges pending



U.S. CONGRESS

Tax reform

- Extension of 2017 Tax Cuts and Jobs Act
- Expiring tax provisions - \$4 trillion will expire this year
- Need to fund tax cuts through offsets

Federal government appropriations

- March 14 deadline
- Requires Democratic votes in Senate to pass

Debt ceiling

- UST has instituted “extraordinary measures”
- Late summer - date that US government could default on its debts; US has never defaulted

Financial services legislation

- Stablecoins and digital assets market structure
- Capital formation
- Congressional Review Act

Investigations

- Scrutiny of government spending on renewable projects
- Debanking
- China, ESG, antitrust, Big Tech



U.S. FINANCIAL REGULATORS – A LOOK AHEAD

Banking regulators – FDIC, OCC, Treasury

- Capital/Basel III endgame
- Bank supervision and examination
- Bank merger policy
- Fair access/debanking
- Bank and fintech partnerships
- CFPB and state enforcement
- Federal preemption

Federal Trade Commission

- Robust antitrust enforcement and merger review
- Stricter 2023 Merger Guidelines remain in place
- DEI, ESG collusion
- Big Tech
- Consumer protection
- Censorship

Department of Labor

- Issues rules and interpretations regarding fiduciary duties for private-sector pension plans
- Potential for anti-ESG actions relating to plan investments

Securities & Exchange Commission

- Return to core investor protection priorities
- Crypto enforcement cases paused; enforcement unit reorganized to focus on fraud
- Crypto task force created to advance regulatory approach
- Renewed focus on compliance - move away from regulation by enforcement
- Shift away from recordkeeping, broad materiality determination cases
- Incoming Chair previously expressed concerns over high corporate penalties
- FCPA investigations?

Commodity Futures Trading Commission

- New enforcement priorities – fraud, retail investors
- Industry engagement on digital assets, conflicts of interest, prediction markets
- Scrutiny of guidance relating to trading of voluntary carbon credit derivative contracts

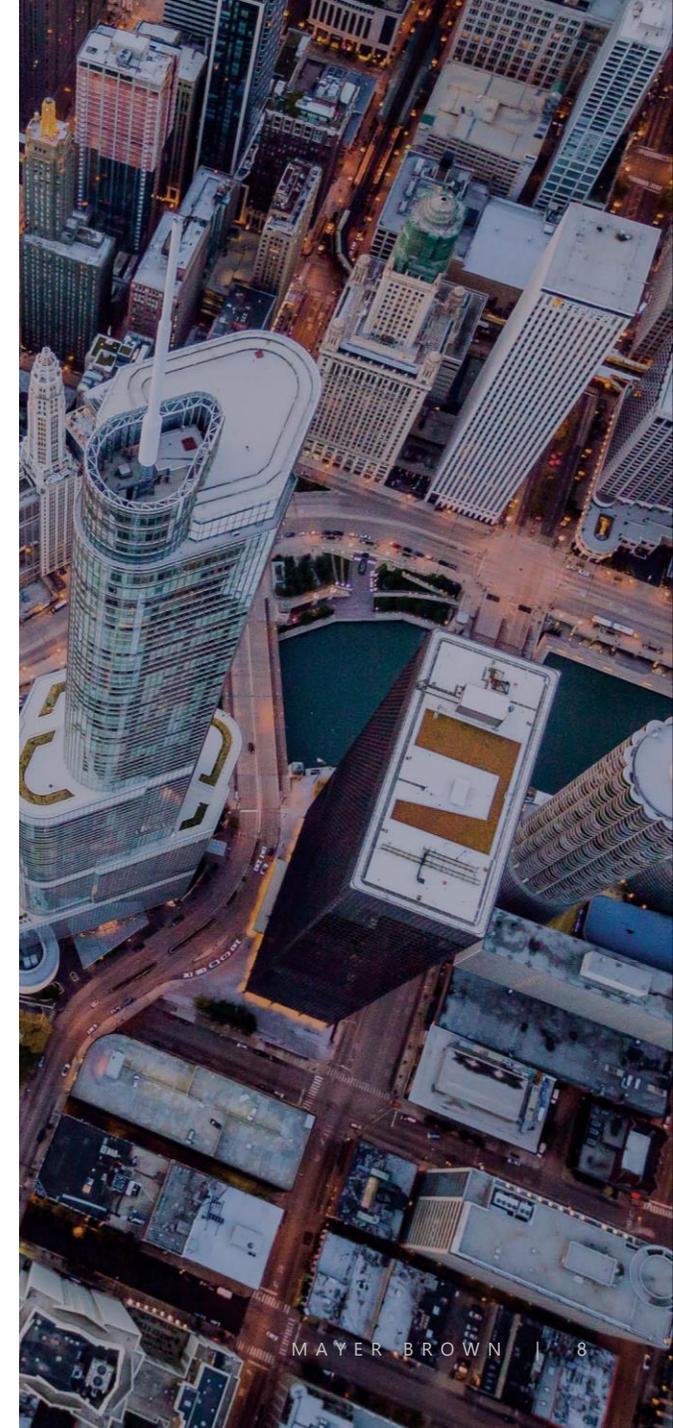
Consumer Financial Protection Bureau

- New administration seeks “substantially more streamlined and efficient bureau”

Scrutiny of Diversity, Equity & Inclusion Initiatives

Executive Order, “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”

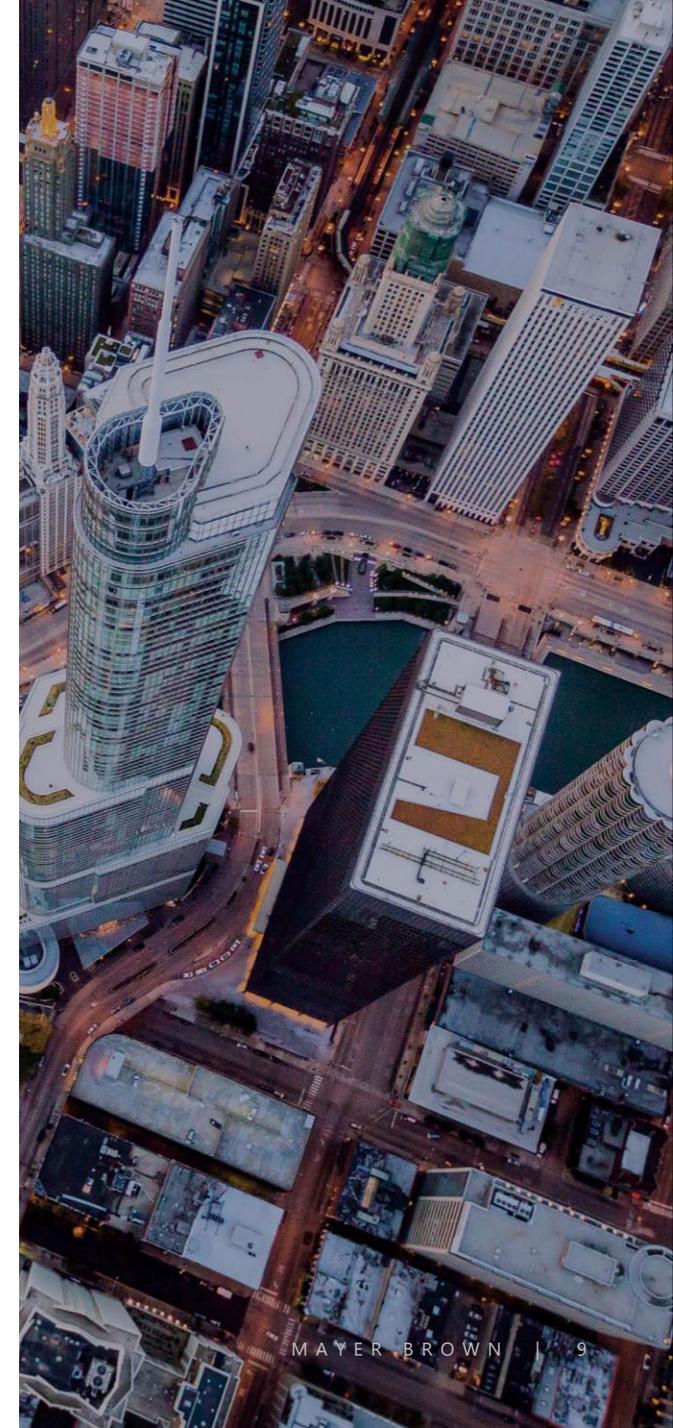
- May 21, 2025 - Attorney General report to President Trump’s Domestic Policy Advisor detailing a plan to end “illegal” DEI discrimination and practices.
- Each federal agency must identify the most “egregious and discriminatory” DEI practices within their agency’s jurisdiction.
- Federal agencies are also required to identify:
 - Up to 9 potential civil compliance investigations of publicly traded corporations or other private employers;
 - Potential federal lawsuits; and
 - Potential regulatory action and sub-regulatory guidance.



Scrutiny of Diversity, Equity & Inclusion Initiatives

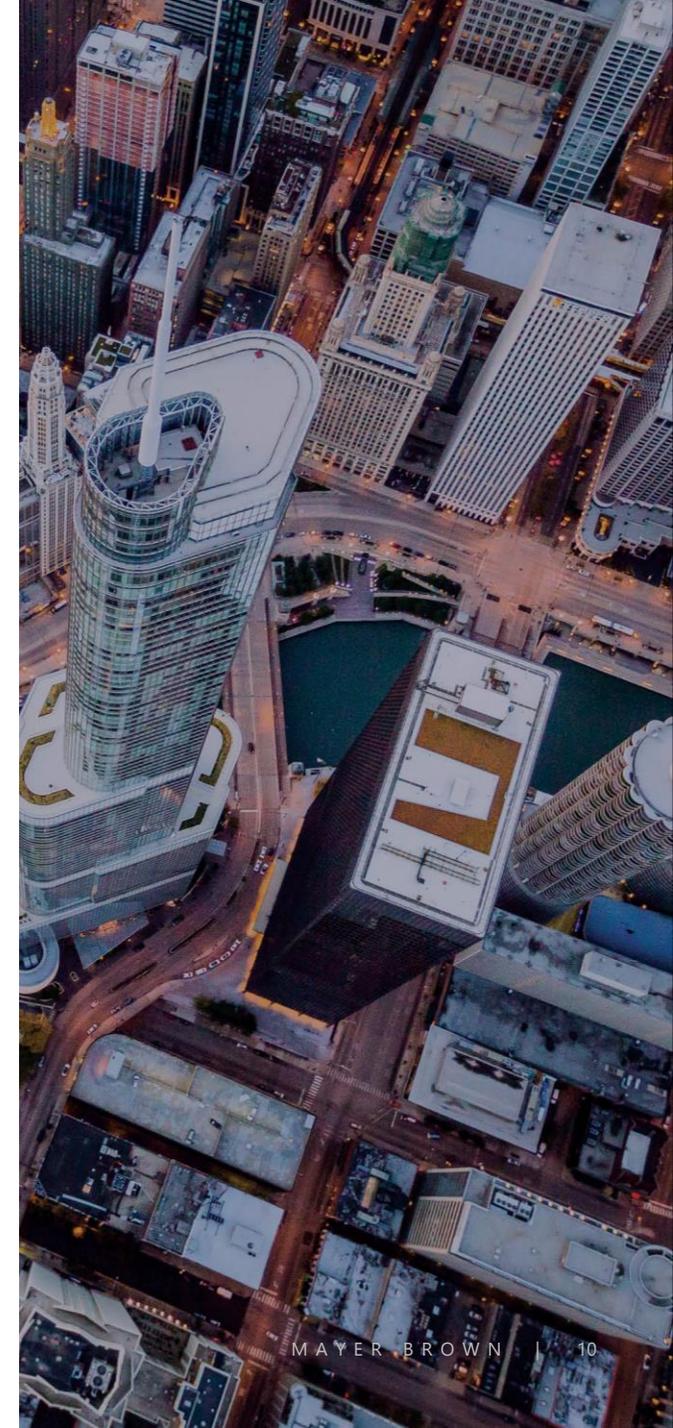
Government Investigations

- Republican AGs letters to financial institutions on DEI policies and programs
- Attorney General Memorandum
 - Department of Justice’s Civil Rights Division will “investigate, eliminate, and penalize” illegal DEI “preferences, policies, programs, and activities” in private sector and at educational institutions.
 - Department of Justice is to develop plan for “up to nine civil compliance investigations” and “proposals for criminal investigations.”
- New FTC chair
 - Called DEI a “scourge on our institutions” and suggested he would “[i]nvestigate and prosecute collusion on DEI, ESG, advertiser boycotts, etc.”
- New EEOC Acting Chair’s priorities include “rooting out unlawful DEI-motivated race and sex discrimination”
- Use of False Claims Act?



Continued Divergence in ESG Landscape

- **Anti-ESG shift in US predates the election**
 - Legal challenges to ESG regulations
 - State attorneys general investigations
 - State boycott and anti-ESG laws
 - Litigation challenging ESG considerations in retirement plans
- **President Trump's initial executive orders and actions**
 - Regulatory freeze
 - Rescinded Biden climate orders
 - Withdrawal from Paris Agreement
 - Scrutiny of corporate DEI initiatives
- **Corporate Environment**
 - Banks and financial institutions are withdrawing from climate initiatives in US
 - Corporate DEI initiatives are being reevaluated; companies removing DEI references on websites
 - Republican concern over debanking, including relating to ESG



Continued Divergence in ESG Landscape

- **Federal Agencies**

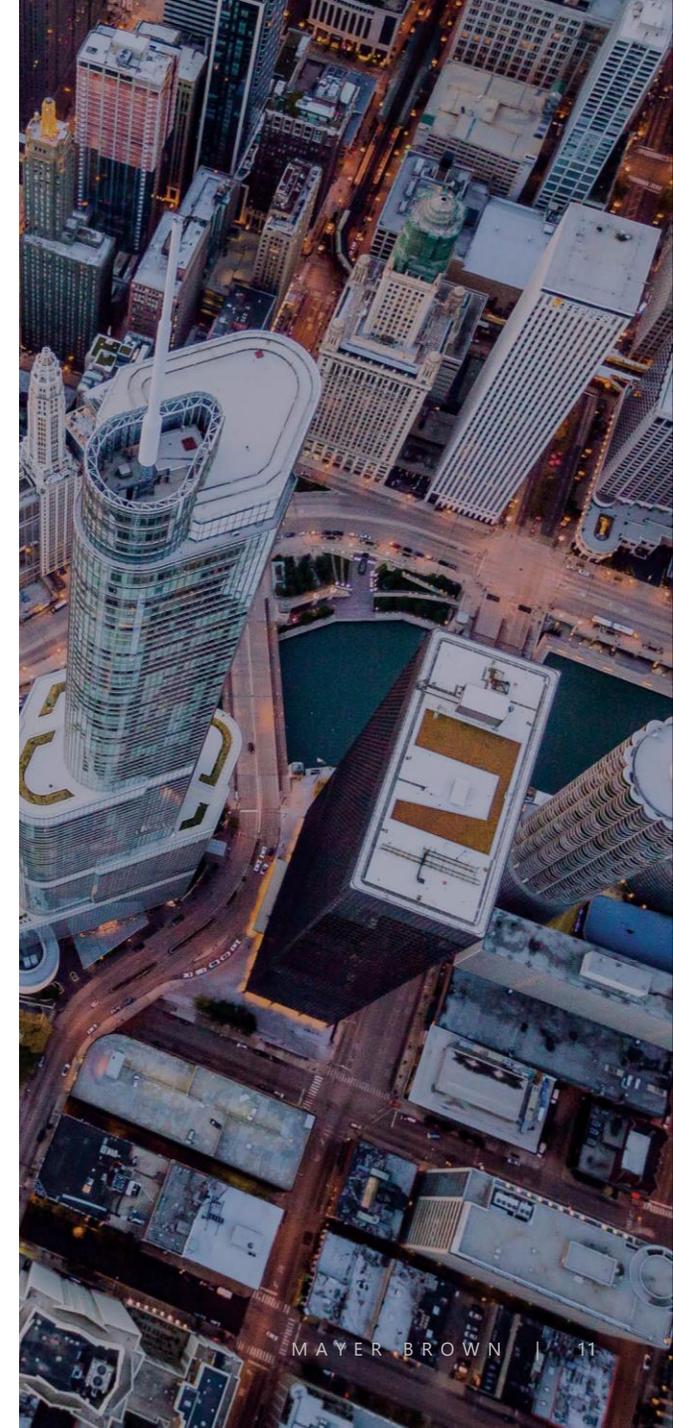
- Acting SEC Chair is seeking pause of climate rule litigation; describes rule as “deeply flawed”
- New SEC staff guidance relating to investor engagement on “social, environmental, or political policy” aimed at large asset managers
- Gensler-era staff guidance on shareholder proposals withdrawn; will be easier for companies to exclude certain ESG proposals
- New DOL leadership
- FTC or DOJ to investigate climate “collusion”?

- **Divergence at state level continues**

- California climate disclosure laws challenged in litigation
- Republican vs. Democratic state legislation
- Democratic state lawsuits on greenwashing

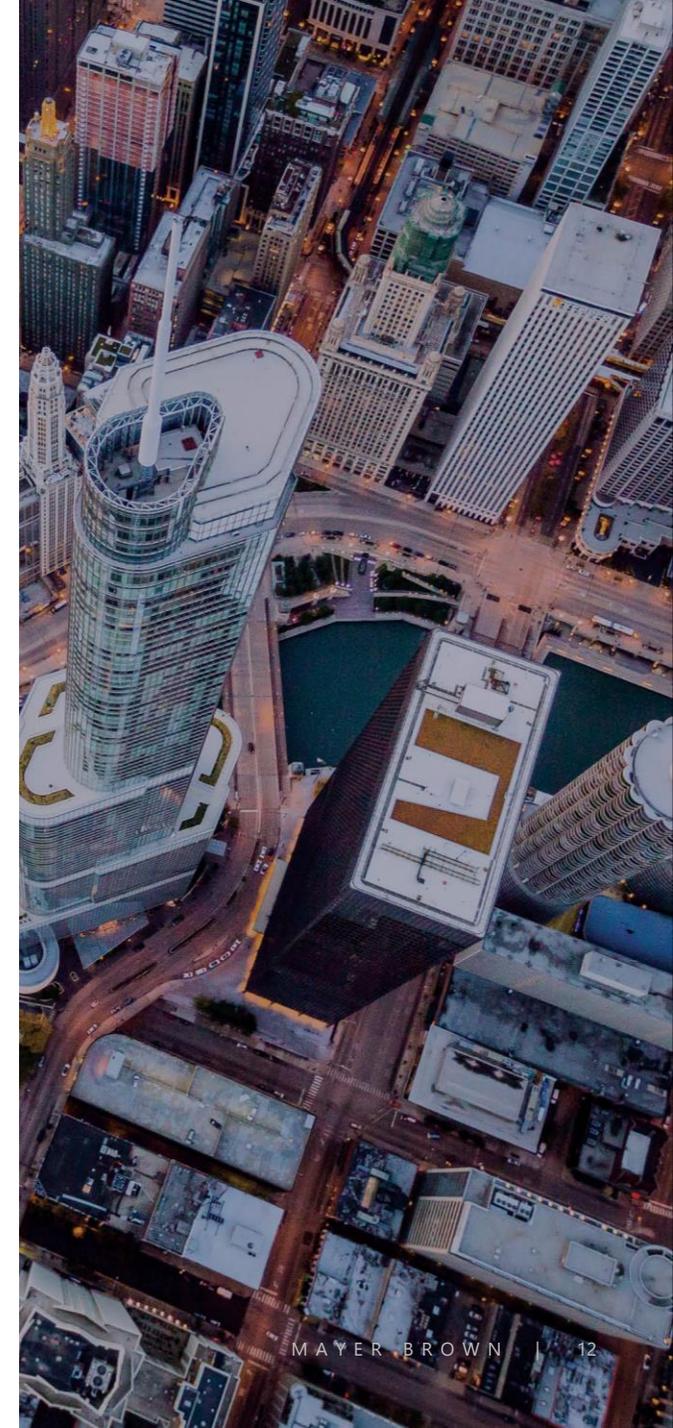
- **Extraterritorial application of EU ESG frameworks**

- New Commerce Secretary suggested US would use “all available trade tools” against EU in response to CS3D



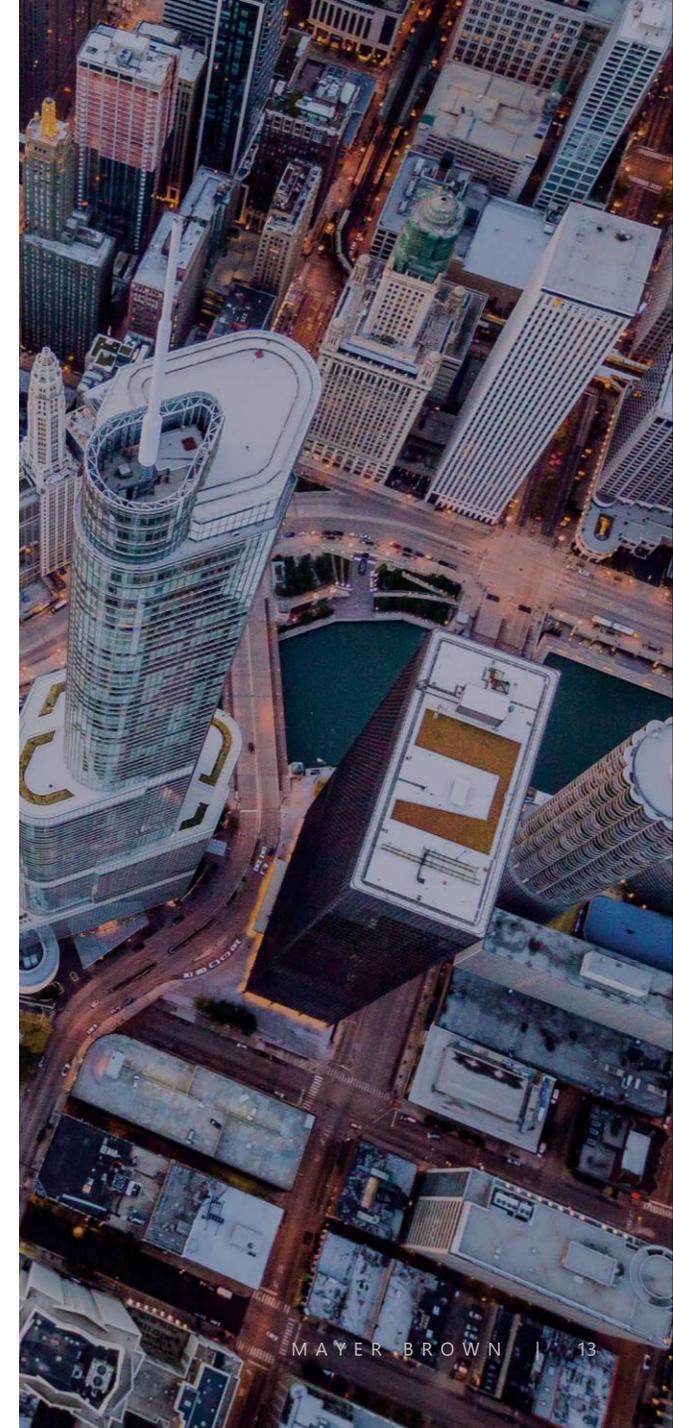
Corporate Enforcement & Investigations

- **Department of Justice**
 - “America First”
 - Immigration enforcement
 - Transnational criminal organizations
 - DEI
 - Consumer protection
 - New approach to corporate cooperation credit
 - Pull back use of third-party settlement payments
 - FCPA pause
 - Sanctions to reinforce national security priorities
 - Operation Chokepoint 2.0; debanking



Corporate Enforcement & Investigations

- **Future of CFPB enforcement program uncertain**
- **Federal Trade Commission**
 - Robust antitrust enforcement
 - Stricter merger review guidelines from 2023 remain in place
 - DEI, ESG collusion
 - Big Tech
 - Consumer protection
 - Censorship
 - Populist approach to antitrust enforcement



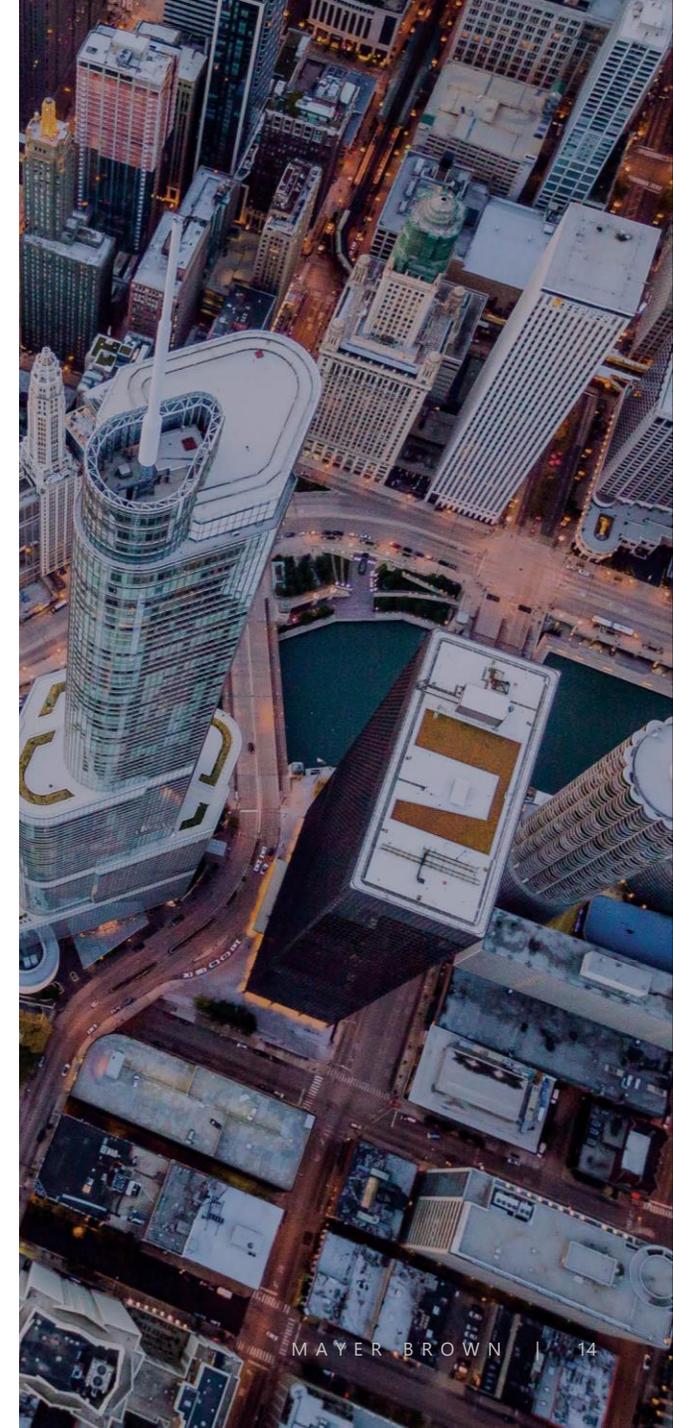
Corporate Enforcement & Investigations

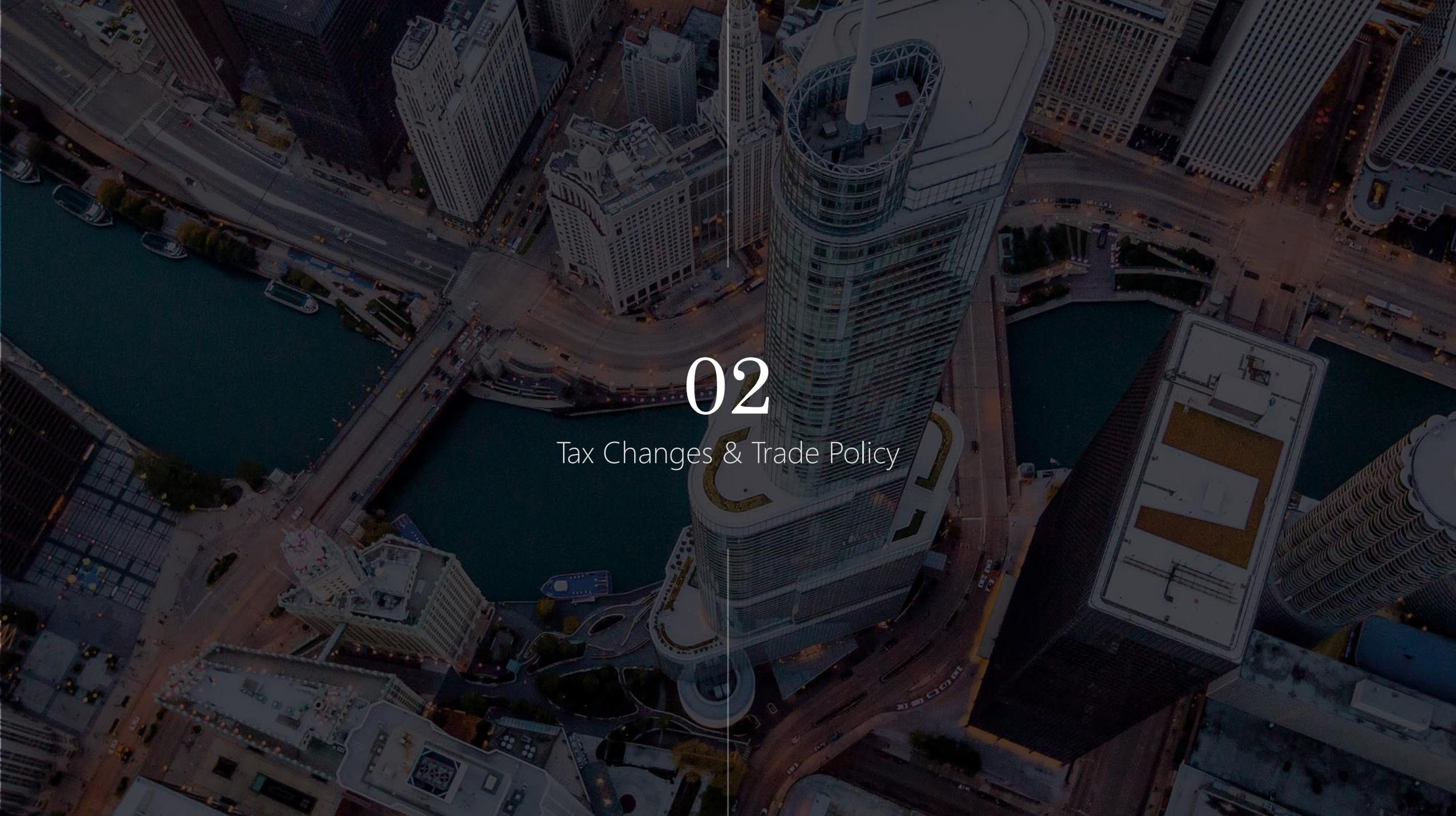
- **Securities & Exchange Commission**

- Return to core investor protection priorities
- Crypto cases paused; crypto task force created to advance regulatory approach
- Incoming Chair previously expressed concerns over high corporate penalties
- Move away from regulation by enforcement – renewed focus on compliance
- Shift away from recordkeeping, crypto, broad materiality determination cases
- FCPA?

- **Congress**

- Investigations to support administration priorities
- Scrutiny of government spending on renewable projects
- Debanking
- Business with sanctioned parties and China
- ESG still in the spotlight
- Antitrust and Big Tech
- Private sector coordination with Biden administration



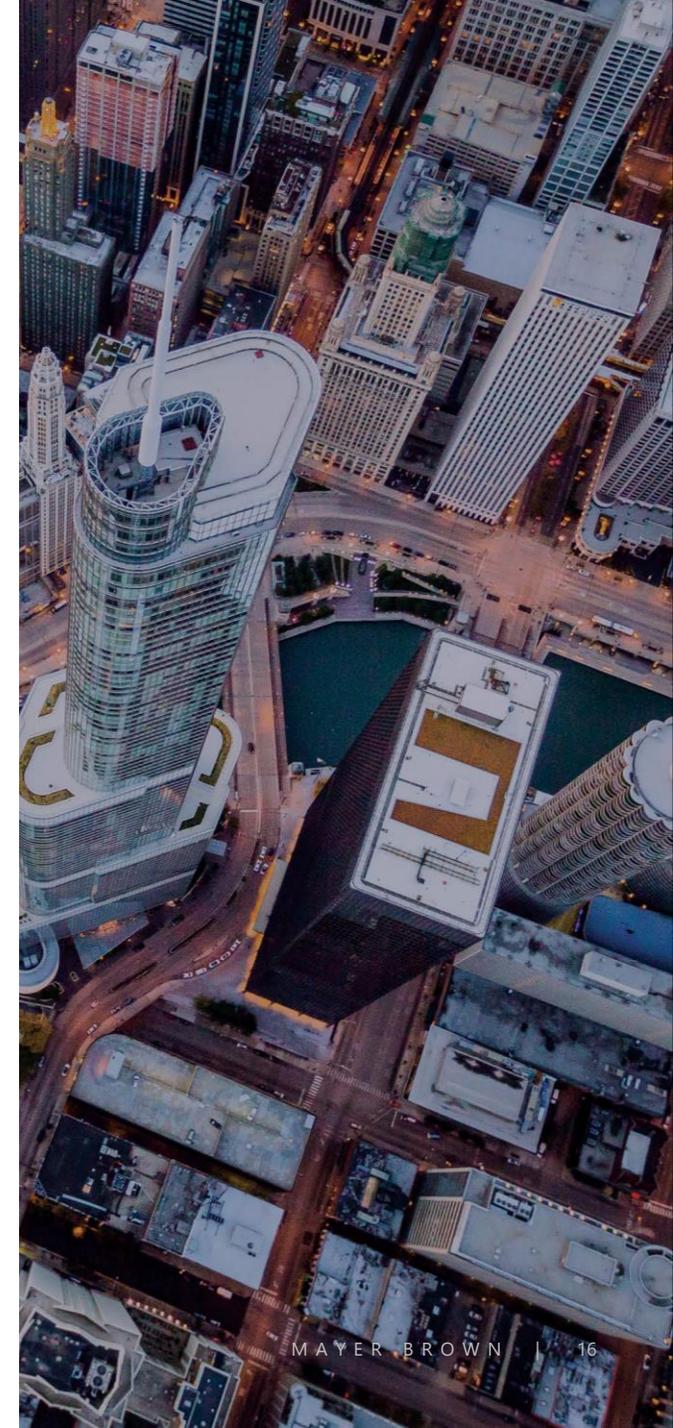
An aerial photograph of a city skyline, featuring a prominent skyscraper with a distinctive top section. The image is overlaid with a semi-transparent dark blue filter. The skyscraper is the central focus, surrounded by other high-rise buildings, streets, and a body of water with several boats. The overall scene is a dense urban environment.

02

Tax Changes & Trade Policy

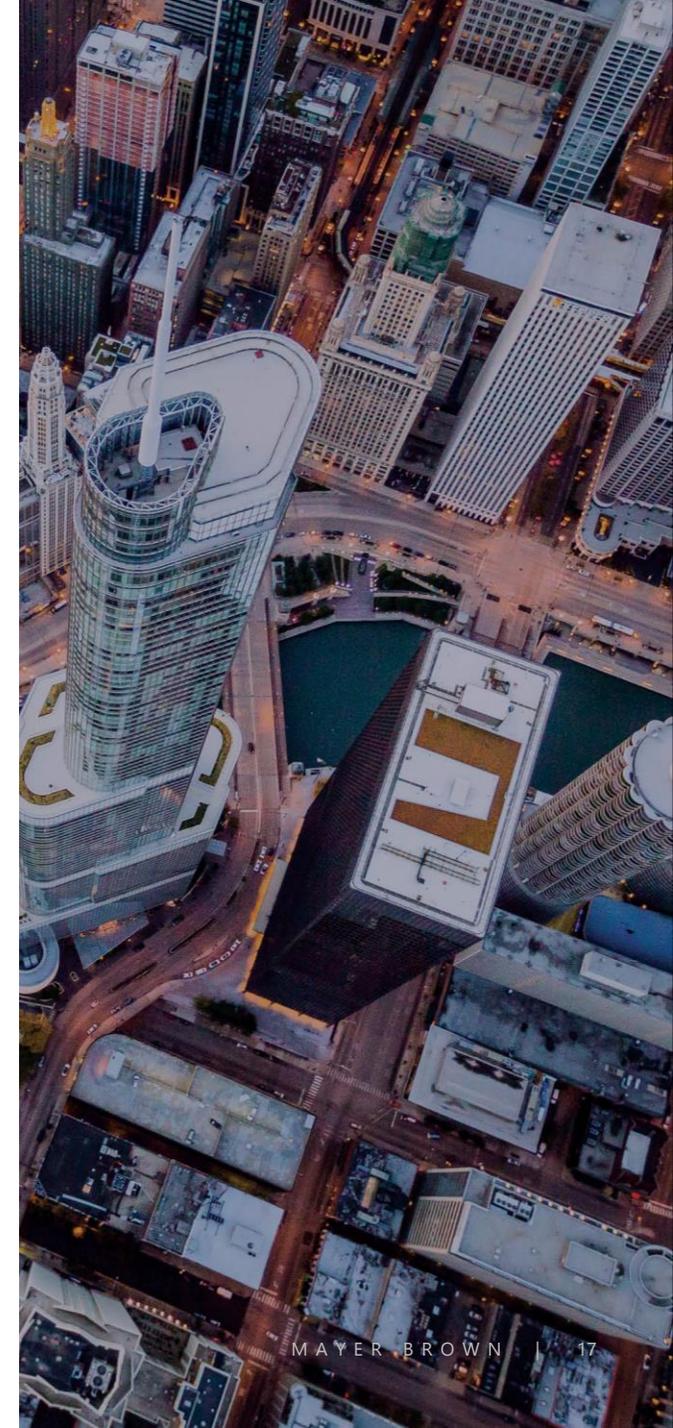
Why is 2025 being referred to as the “Superbowl of Tax”

- A huge range of tax policy issues must be addressed in 2025, including:
- Large chunks of the individual side of the Code expire, including:
 - Lower individual tax rates and brackets for individuals,
 - 199A deduction for pass-through businesses,
 - Expanded child tax credit, and
 - Cap on state and local tax deduction.
- Permanently extending all the expired and expiring provisions of the 2017 Tax Cuts and Jobs Act (TCJA) costs somewhere between \$4 and \$5 trillion.
- Campaign pledges by candidate Trump (e.g., expanded Child Tax Credit, no tax on tipped income, overtime wages or Social Security benefits), lower corporate rate on American manufacturers - continue to grow the total estimated cost of all the tax provisions that could be debated in 2025.
- Even for Washington, DC that is real money.
- There are not enough tax increases on the table to offset the cost of all the desired tax cuts.



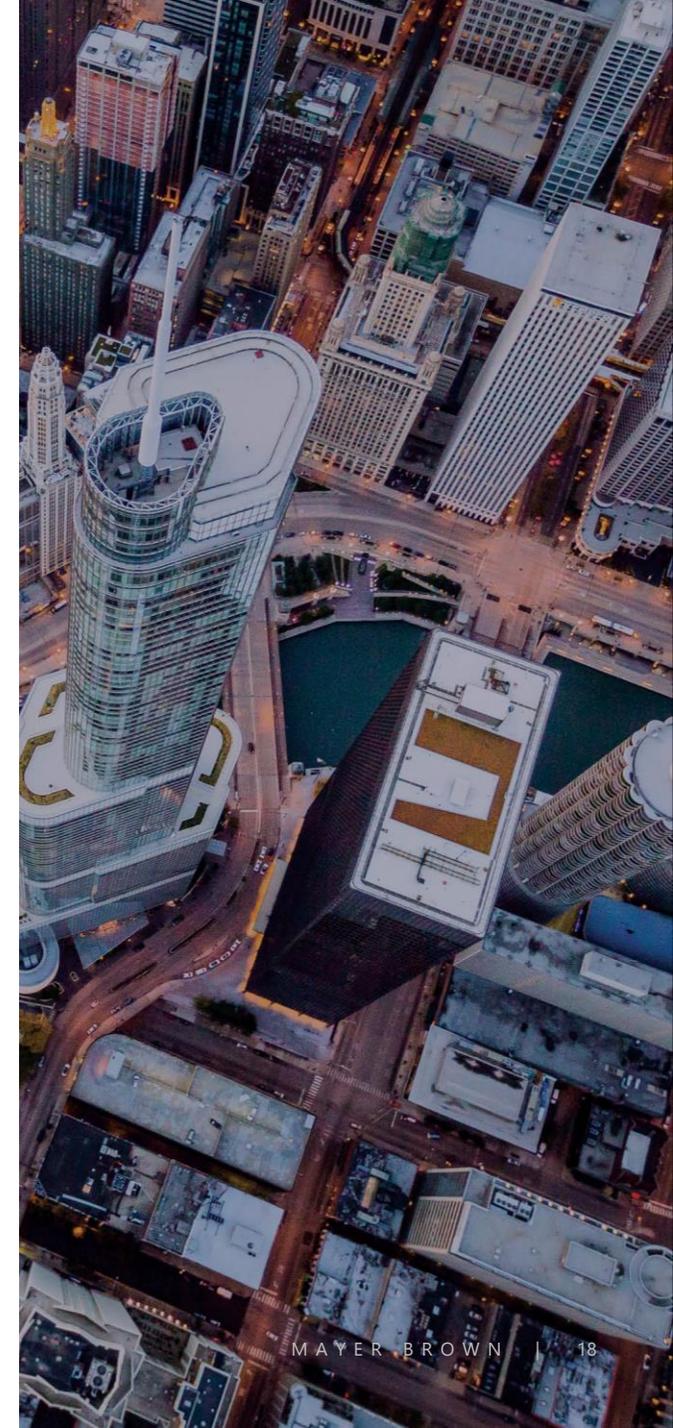
Understanding the Process

- With the election giving the GOP full control, Trump Administration and GOP control of both the Senate and the House of Representatives, the GOP will control the process and substance of the debate.
- GOP is using the budget reconciliation process to advance tax legislation. This special process allows the GOP to avoid the Senate filibuster and pass legislation through the Senate with only 51 votes.
- This is the same special process Congress used to originally enact TCJA and the IRA.
- However, there are budget rules that constrain what the GOP can do in this process. These budget constraints are why several parts of TCJA are scheduled to expire.
- These budget constraints will limit the ability of the GOP to make permanent changes/extensions and may prompt the GOP to look for other, non-traditional sources of revenue to help offset the cost of the tax cut extensions.
- Congress currently debating whether to do everything in one bill or split into two bills with tax in the second bill.



Summary of Key Policy Issues:

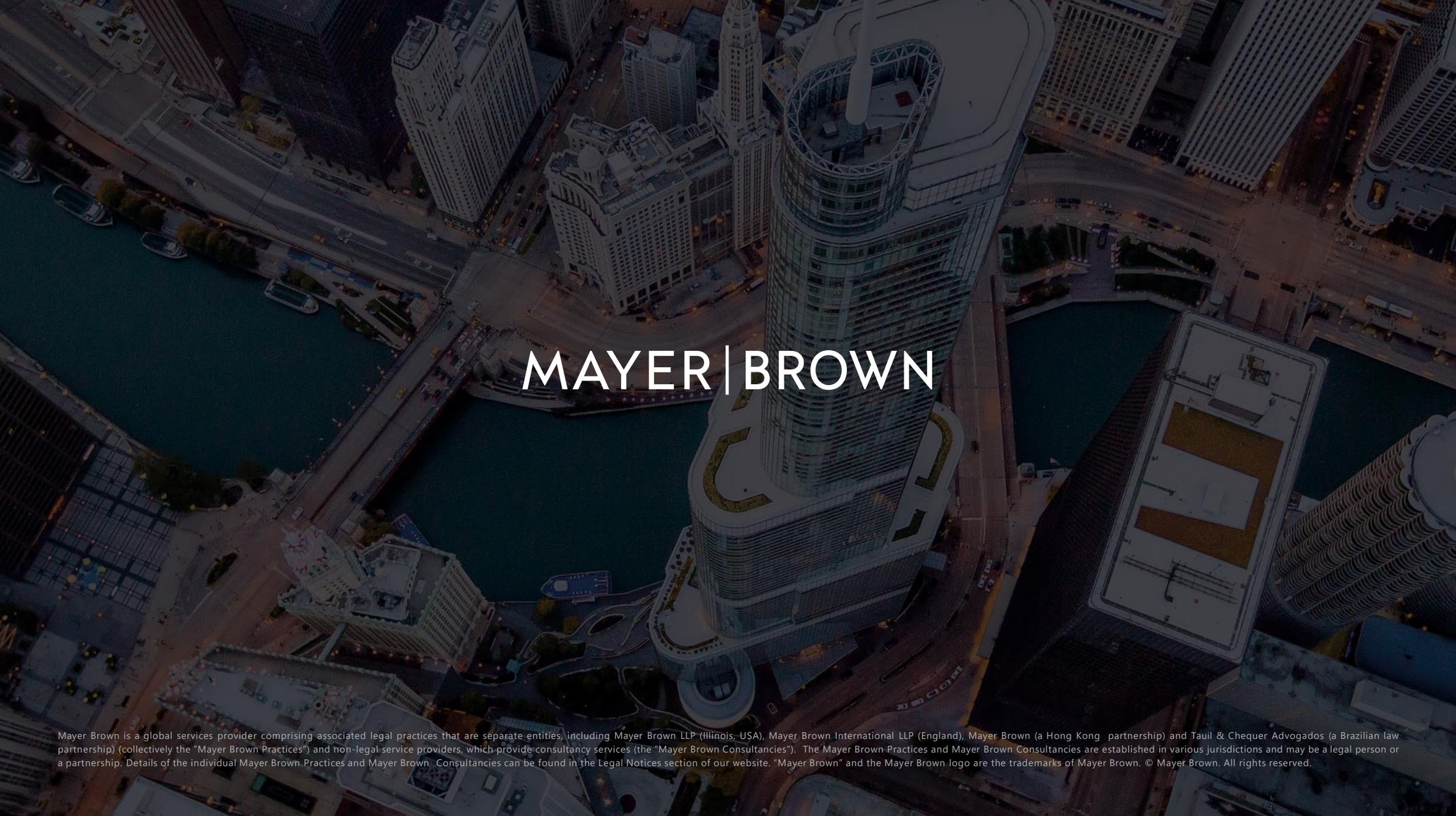
- TCJA extension: Applies primarily to “individual” side portions of the code as well as the special deduction for small businesses.
- IRA: No prospect of full repeal, however, repeal of certain provisions, changes to criteria, particularly more buy America/anti-China in any election outcome.
- International: OECD Pillar 1 and Pillar 2 supposed to start kicking in, bipartisan opposition to key portions of those agreements.
- Campaign promises: No taxes on tips, lower corporate rate of domestic manufacturers, overtime or Social Security, fundamental changes in tax credits for housing.
- Wild Cards: Tariffs, increase in stock buy back excise tax, carbon border measures, financial transaction tax, punitive taxes against corporations HQ'd in countries that implement OECD Pillar 2



Ramifications of Potential Changes

- Changes to corporate rate will have significant ripple effects.
- Changes to criteria to qualify for energy credits.
- Repeal of transferability provisions from IRA and CHIPS Acts.
- Impact on supply chains from tariffs.
- Enactment of countermeasures against countries imposing UTPR or DSTs on US corporations.
- Impact on IRS audit and investigation ability if IRS funding is reduced.





MAYER | BROWN

Mayer Brown is a global services provider comprising associated legal practices that are separate entities, including Mayer Brown LLP (Illinois, USA), Mayer Brown International LLP (England), Mayer Brown (a Hong Kong partnership) and Tauli & Chequer Advogados (a Brazilian law partnership) (collectively the "Mayer Brown Practices") and non-legal service providers, which provide consultancy services (the "Mayer Brown Consultancies"). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the Legal Notices section of our website. "Mayer Brown" and the Mayer Brown logo are the trademarks of Mayer Brown. © Mayer Brown. All rights reserved.