

NIRI Twin Cities & Philadelphia Co-hosted Virtual Program
A World in Transition
How the Elections May Reshape Global Politics and Economics

November 21, 2024



A World in Transition: How the Elections May Reshape Global Politics and Economics

Our Experts Panelists from DLA Piper LLP and The Cohen Group will discuss what public companies should expect from the SEC under a new administration, how the global economic and political environment may change and how companies should best position themselves to succeed in a world of uncertainty.



Richard Burr, Former U.S. Senator

DLA Piper - Chair, Health Policy Strategic Consulting Practice

Richard Burr is a principal policy advisor and chair of DLA Piper's Health Policy Strategic Consulting practice within the firm's Regulatory and Government Affairs practice group. He provides policy advice, strategic consulting and a wide range of related services to life sciences and healthcare clients navigating a rapidly changing policy landscape and significant regulatory and political uncertainty.

Since his election to Congress in 1994, Burr served five terms in the House of Representatives and three terms as a United States senator for North Carolina from 2005 to 2023. After nearly three decades in federal service as a US congressman and senator, Richard Burr is widely known as one of the foremost government authorities in healthcare and life sciences policy.

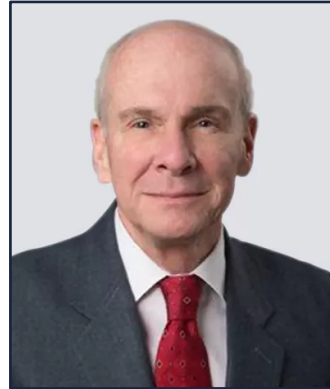


Vanessa J. Le

DLA Piper - Of Counsel, National Security and Global Trade

Vanessa Le served for almost a decade in the Executive Branch and in Congress, where she developed substantive national security experience, honed a keen ability to manage sensitive oversight issues, and provided time-sensitive and critical legal advice to senior leaders across the US government.

Vanessa served as Special Advisor to Director of National Intelligence Avril Haines and Special Counsel to the General Counsel at the Office of the Director of National Intelligence (ODNI). During her time at ODNI, Vanessa also completed a detail as Associate Counsel in the Office of White House Counsel, where she worked on sensitive oversight matters.



P. Michael McKinley, Ret. U.S. Ambassador

The Cohen Group - Senior Counselor

Ambassador P. Michael McKinley (Ret.) is a senior counselor at The Cohen Group, where he provides strategic advice to companies on global geopolitical realities that impact their operations. He supports entry into new markets, government engagement strategies, and interpreting policy and regulation shifts domestically and internationally. He also heads the Latin America Practice.

Ambassador McKinley joined The Cohen Group in 2020 after a 37-year career at the Department of State. He held senior leadership positions in missions in Latin America, Europe, Africa, and Afghanistan and concluded his career as senior adviser to the Secretary of State. As a four-time Ambassador, he led some of the largest US embassies in the world including Peru, Colombia, Afghanistan, and Brazil.



Era Anagnosti, Partner

DLA Piper - Co-Chair, Capital Markets & Public Company

Era Anagnosti is a capital markets partner with distinguished government and private practice experience, including more than 10 years with the Securities and Exchange Commission (SEC). As part of her core practice, she regularly advises public companies in their SEC reporting obligations and corporate governance matters. Era has extensive experience on a large variety of disclosure and compliance matters under the US federal securities laws, resolving complex and bespoke securities laws questions through innovative and practical approaches. As part of her transactional practice, she represents issuers and underwriters in a broad array of capital market transactions, including initial public offerings (IPOs), de-SPAC transactions, tender offers, spin-offs, rights offerings and follow-on offerings.

The SEC and the New Trump Administration

Changes at the SEC

Many of the priorities that the SEC pursued under Chairman Gary Gensler's tenure will be discontinued under a Trump-appointed commission chair

- President-elect Trump will be entitled to appoint a new SEC chair, and it is expected that Chairman Gary Gensler will leave before the end of his term in 2026
- Potential new chairs include current Republican-appointed Commissioners Peirce and Uyeda
 - Either may serve as the interim/acting chair until a new chair is appointed
- Dissents from Republican commissioners to SEC-rulemaking under Gensler will likely provide a strong indication of new SEC priorities
- **Congressional Action**
 - With control of both the U.S. House and Senate, Republican lawmakers may seek to:
 - Use the Congressional Review Act to invalidate SEC rules adopted under Gensler by a simple majority vote in both chambers;
 - Pass legislation that could negatively impact the ability of shareholders to make ESG-related proposals; and
 - Pass legislation related to areas such crypto and AI which could result in more SEC-rulemaking in those areas

Changes at the SEC

Rulemaking

- SEC rulemaking during the Trump administration is likely to be more principles-based than prescriptive and may prioritize the following areas:
 - **Market Access** - SEC may pass rules providing for more access to private markets (e.g., allowing for the definition of accredited investor to be expanded)
 - **Crypto** - The SEC may adopt rules that are “friendlier” to the crypto industry
 - E.g., more favorable rules related to crypto assets and when such assets may be treated as securities
 - SEC may also decide to defer to CFTC for crypto regulation
 - **Cessation and Rollback of ESG Initiatives** - ESG disclosure rules proposed under Gensler will likely not be finalized:
 - SEC rules proposed in June 2022 that would require investment advisers, funds, and certain BDCs to provide additional information regarding their ESG investment practices are unlikely to be adopted
 - Rulemaking proposals under the Gensler administration regarding human capital management and board diversity will likely be scrapped

Changes at the SEC

Rulemaking (Cont'd)

- **Existing Rules** – Some adopted rules that have been challenged in the courts may no longer be defended or may be rescinded
 - *Climate* - The climate rules adopted by the SEC in March 2024, whose numerous challenges have been consolidated in a case before 8th Circuit, have been stayed pending resolution of the litigation (See [DLA Alert](#))
 - *Board Diversity* - In *Alliance for Fair Board Recruitment v. SEC*, in which conservative activists challenged the Nasdaq board diversity rule adopted in 2021, the SEC may choose to no longer defend the rule in the litigation before the 5th Circuit
 - *Proxy Advisors* - Rules regulating proxy advisory firms which were adopted in 2020 and then partly rescinded by the SEC under Gensler may be reinstated
 - Although litigation created a split in 5th and 6th Circuit Appeals Courts (see *Chamber of Commerce v. SEC* and *National Association of Manufacturers v. SEC*), the SEC may decide not to defend the rescission under Gensler allowing the 2020 rules to stand

Changes at the SEC

Enforcement

- There will likely be fewer enforcement cases in areas such as cybersecurity, ESG and crypto
 - Enforcement activity may be more focused on issues and violations impacting smaller investors and more traditional violations of securities laws
 - The approach towards the crypto industry may be more lenient, perhaps focusing more on regulations clarifying SEC regulatory authority through no-action letters
 - Fewer cases brought for failure to register under existing securities laws (e.g., token offerings, as broker-dealer, exchange, etc.)
 - The Crypto Assets and Cyber Unit, [renamed and expanded](#) in 2022, may be refocused more on cybersecurity matters
 - Fewer controls-related cases may be brought such as [Andeavor LLC](#) (insider trading), [R.R. Donnelley](#) (cybersecurity) and [Charter Communications](#) (stock buybacks)
 - SEC may issue new guidance and no-action letters to indicate enforcement approach on Gensler-era regulations
 - SEC is likely to be more receptive to no-action letters seeking to exclude environmental and social shareholder proposals

Geopolitical Considerations

Understanding why geopolitics matters to your business

Asking the right questions, helping you find the right answers for your business:

- As the national security threat has shifted from counterterrorism to great power competition with near-peer adversaries like China and Russia, so too has the lens for policymakers and regulators.
- That shift, combined with our economic interdependence with China, has created a perfect storm for many multinational companies with a presence in China, joint ventures with Chinese companies, or those considering a first-time investment or market expansion in China.
- Companies should consider both legal and extralegal risks and processes to mitigate those risks, asking questions like:
 - Do we know what a rise in geopolitical tension looks like? Do we understand the triggers that might warn us about an impending regulatory action in China or in the US that would affect our business operations?
 - What's our obligation to our employees in-country?
 - What do we need to tell our board about how we are managing the potential resiliency impacts of regulatory action both in China and in the US?

Tracking the Legal Obligations to Understand, Mitigate, and Communicate about Geopolitical Risk

Geopolitical risk
is the new
cybersecurity
risk.

The obligation is the
same: mitigate risk
under Delaware law.

Marchand: "...directors have
a duty 'to exercise oversight'
and to monitor the
corporation's operational
viability, legal compliance,
and financial performance."

Obligations to Your Employees

Operating globally means mitigating global risk to your employees

- What's your model?
 - Employee travel
 - Employees on long-term assignment
- Employee Handbook/Policies should address:
 - Physical safety
 - detention at border crossings
 - being followed
 - interactions with local law enforcement in foreign countries
 - Data security and safe handling practices appropriate for operating environment
 - Employees who don't want to travel to a particular location due to safety concerns

The Current US Policy Environment

US/China diplomatic tit-for-tat creates a tightrope for companies: they must stay on the right side of China's domestic enforcement agencies while also avoiding any negative attention from US policymakers

Bipartisan, broad support to prevent China from accessing critical technologies and to contain the great power competition

House Select Committee on Strategic Competition Between the US and the CCP is focused on:

- funding transparency
- ties to the PLA or CCP

PRC Government/US Government diplomatic tit-for-tat:

- Diplomatic visits with Taiwanese officials, trip to Vietnam
- Biden's EOs on: Investment in China, Data Security
- China's aggressive approach to enforcement for multinationals (.e.g., Bain)

The Cohen Group



How NIRI Should Think About Geopolitics and Risk

- **Greater geopolitical risk is here to stay.** The fraying post-WWII order will make conflicts hotter, trade messier and technology more important than ever, with a significant impact on global businesses.
 - **Conflict:** Russia-Ukraine, Israel-Gaza, etc.
 - **Geoeconomics:** Decline of global free trade system, increasing industrial policy, rise of middle powers.
 - **“Geo-technology”:** Intersection of geopolitics and emerging technologies in a bifurcated technology world.
- **U.S.-China war is not inevitable.** Leaders in both countries understand the cost of war and are trying to avoid it. But the post-WTO accession golden age of bilateral ties is over. Both countries are baking into their policy long-term geopolitical competition.
- **Some risks are hard to predict.** Rival power groupings are challenging Western nations, but it is difficult to assess the likelihood or impact of events like an accident between U.S. and Chinese forces, the Russia-Ukraine war, escalation of conflicts in the Middle East, or potential clashes in the South China Sea.
- **There is no substitute for thinking ahead and reacting quickly.** The Russia-Ukraine war and Houthi attacks on shipping lanes in the Red Sea showed that even unlikely scenarios can rapidly affect global business.

The View from Beijing

Talk Cooperation but Plan for Tension

The Likeliest (but Still Unlikely) Flashpoints

- **Taiwan** The original point of contention in Sino-U.S. ties is still on the front burner.
- **South China Sea** An accident or China-Philippines conflict could spread quickly.
- **Korean Peninsula** Kim Jong-un is signaling that he wants attention.

Warning Signs in China

- China passes legislation requiring foreign companies to comply with stricter data security requirements.
- Chinese authorities investigate foreign firms over national security matters.
- China adds companies in non-sensitive sectors to its “Unreliable Entities List.”
- Hong Kong authorities use provisions of the 2020 National Security Law against business interests there.
- China’s National Administration of Financial Regulation indicates a preference for domestic insurance providers.



Bilateral/Geopolitical Warning Signs

- Congress revokes China’s Permanent Normal Trade Relations (PNTR) status.
- The Department of Commerce controls exports of new categories of technologies with military or national security applications.
- The United States expands outbound investment screening or review of companies beyond technologies with military or national security applications.
- The United States ramps up enforcement of the Uyghur Forced Labor Prevention Act.
- China upgrades ties with Russia and lifts financial transaction restrictions.
- Congress prohibits U.S. holdings of securities “controlled by the CCP.”

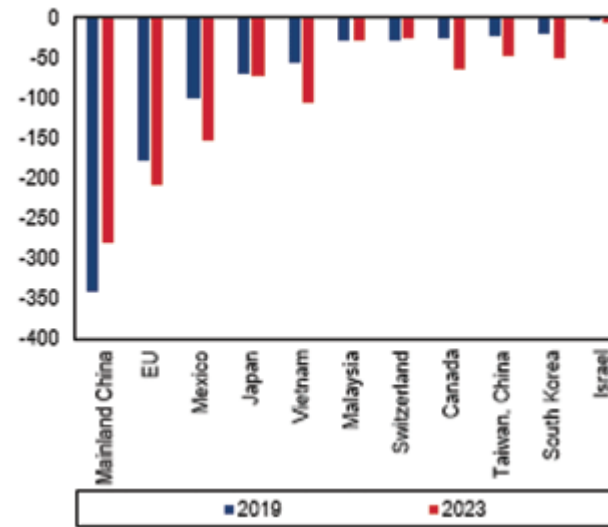
The View from Europe

Hoping for Partnership, Preparing to Go It Alone

Likely Trends during Trump 2.0 Era

- **Transatlantic Tension** Diplomatic and economy uncertainty over security agreements, tariff policies, and support for multilateral institutions.
- **Elevated status for ideological peers** President-elect Trump is more likely to engage with Hungarian PM Viktor Orban, Italian PM Giorgia Meloni, and other like-minded leaders.

Selected Economies - US Bilateral Trade Balances, USDbn



Initial Responses to U.S. Election

- Concern over the negative impact of tariffs on the Eurozone's struggling economy.
- Discussion about trade policy shifts in anticipation of tougher U.S. approach to allies' ties with China.
- Calls to bolster support for Ukraine in advance of lessening or full cessation of U.S. assistance to Kyiv.

Trump Admin. Policy Priorities

- **Tariffs** – President-elect Trump has proposed a 10% tariff on all U.S. trading partners, including the European Union. This is a policy broader in scope than the tariffs levied on the EU steel and aluminum industry in 2018, during President Trump's first term in office.
- **Trade Deficits** – Lessening trade deficits with countries such as the U.K. and Germany is likely to be a policy priority for the Trump administration.
- **Burden-sharing** – President-elect Trump and potential administration officials have advocated for decreasing the U.S. military presence in Europe and increasing expenditure by allies for their own security.
- **Environmental Deregulation** – Regardless of whether President Trump withdraws from the Paris Climate Accords, his administration will seek fewer environmental provisions in bilateral and multilateral agreements.

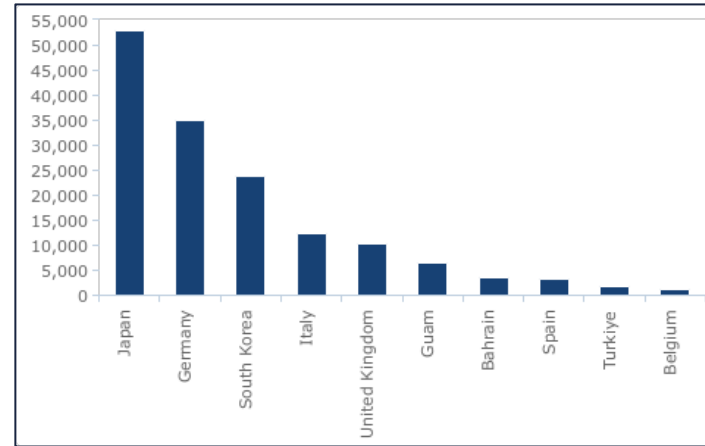
The View from the Global South

Manage Tensions, Seek Opportunities

Likely Trends during Trump 2.0 Era

- **Dominance of “transactional diplomacy”**
Trump administration will determine bilateral ties based more firmly on U.S. economic interests and near-term policy gains over long-term partnerships.
- **Attempts to reshore supply chains**
Policies will be driven by interest in boosting domestic manufacturing and mining.

United States - Global Troop Deployments, June 2024



Initial Responses to U.S. Election

- India expects to continue to deepen its strong bilateral ties with the U.S. based in part on the Modi-Trump relationship and views on China.
- Australia expects a continued strong relationship with the U.S., given mutual China concerns.
- Expectation of tougher approach towards Venezuela and Iran.

Trump Admin. Policy Priorities

- **Tariffs** – President-elect Trump has proposed a 10% tariff on all U.S. trading partners, including U.S. allies in the Indo-Pacific.
- **Burden-sharing** – President-elect Trump and potential administration officials are skeptical of Japanese, Taiwanese, and South Korean investments in their own defense. The new administration will call for increased burden-sharing across U.S. allies in the Indo-Pacific.
- **The Middle East**– The Trump administration will be supportive of Israel’s decisions related to the war in Gaza and will provide assistance to the country against regional militant groups. The administration will seek an end to hostilities and closer ties to Saudi Arabia.
- **Latin America** – Concerns over illegal immigration and the transit of illicit narcotics to the United States will dominate any engagements under a Trump administration. The focus on immigration means progress on other issues, such as nearshoring supply chains, may be affected.

