

TRUMP OR SANDERS COULD CRUSH STOCKS – EVEN WITHOUT CONGRESS

If Donald Trump or Bernie Sanders were elected, there is good reason to believe they would not operate under traditional constraints as other presidents have and would take actions that could be very disruptive to financial markets and send the stock market sharply lower. We provide a guided tour in today's report of the kinds of actions they could take even without congressional approval.

To be sure, presidents are limited in what they can accomplish without action from Congress. They can do very little on tax policy, for example, without legislation. However, presidents have enormous authority under existing law that past presidents have chosen not to employ. Investors are accustomed to presidents who play between the 40 yard lines. Donald Trump and Bernie Sanders aren't likely to be so constrained. If either of them emerges as the nominee of their respective parties (and they could both win again tomorrow night), market multiples should contract.

- **A president can easily start a trade war without Congress.** Trump and Sanders both strongly oppose the Trans-Pacific Partnership trade deal and it is probably dead if either of them is elected. Both would likely name China a currency manipulator within the first few months of taking office, setting in motion negotiations to address unfair currency manipulation. Trump or Sanders could threaten to withdraw from trade agreements like NAFTA.

A president has rarely exercised, but has broad authority, to impose tariffs or countervailing duties on foreign goods. The normal route for trade disputes is an investigation by the Commerce Department. If it finds an unfair trade practice, the International Trade Commission (ITC) determines if there was harm to a US industry. If so, the president can impose countervailing duties.

But a president can go much further. He could invoke Super 301 authority, which allows the administration to identify nations with unfair trade practices and take steps to stop those unfair practices. Under section 201, if the ITC finds injury to a US industry (even with no finding of an unfair trade practice), the president can impose tariffs or limit imports. Under section 232, the president could determine that certain imports pose a national security risk and limit them. The president could also greatly limit foreign investment in the US by tightening the standards under the CFIUS (Committee on Foreign Investment in the US) process.

There is a law on the books called the International Emergency Economic Powers Act (IEEPA) that gives the president extremely broad authority to block trade entirely if he declares a national

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emergency. When the US was essentially at war with Nicaragua in the 1980s, President Reagan used it to stop trade with Nicaragua. Jimmy Carter used it to freeze assets and block trade with Iran when it took US diplomats hostage. Suppose a President Trump declares the porous border with Mexico a national emergency and threatens to cut off trade unless Mexico pays for a wall. He could do so under IEEPA.

To be sure, Trump could be bluffing about the wall, the 45% tariff on Chinese goods, and jettisoning international trade agreements. Wouldn't it seem likely, though, that he would at least threaten harsh measures as a negotiating tactic? And if he could convince the Chinese or the Mexican government he was serious, he'd probably convince a lot of investors he was serious too – so he could have a big impact on financial markets even if he decided to back off in the end.

- **Sanders is saying he has all the authority he needs to break up the biggest banks.** In a January 5 speech, which you can find [here](#), Sanders asserts that he has the authority under Dodd-Frank to break up the biggest banks and that he intends to do so. Under Dodd-Frank, if the Fed and two-thirds of the Financial Stability Oversight Council (FSOC) determine that a financial institution poses a “grave threat” to financial stability, the bank regulators can break it up. While the officials who sit on FSOC are subject to confirmation by the Senate (which Democrats would likely have if Sanders wins the White House), these officials (Treasury Secretary, SEC Chairman, etc.) are appointed by the president. The Chairman of the Fed sits on FSOC, and Yellen's term runs out a year after the next president is sworn in. In his first 100 days in office, Sanders is promising to name the banks, shadow banks, and insurance companies he will break up and take the steps necessary to break them up over the next year. It's debatable whether Sanders could accomplish this, but he might. It's his top priority. If he tries, these stocks will get crushed.

He's also planning a legal assault on the largest banks. In the same speech referenced above, he promises a legal onslaught against an industry whose business model he says is fraud. But instead of letting companies get off by paying fines and admitting no wrongdoing, he intends to criminally prosecute executives and seek criminal sanctions against the companies themselves. Instead of letting banks guilty of crimes continue to operate normally, Sanders could potentially cripple them.

- **The president can unilaterally devalue the dollar.** Perhaps rather than imposing tariffs on China and other countries for currency manipulation, Trump or Sanders will simply depreciate the value of the dollar. The president could do this by jaw-boning the dollar or using the Exchange Stabilization Fund (over which the Treasury Secretary has extremely broad authority) to put downward pressure on the dollar. Trump or Sanders could also nominate people to the Fed who would pursue loose monetary policies specifically with an eye to depreciate the dollar.
- **The president can threaten the independence of the Federal Reserve.** It would be almost inconceivable that a Jeb Bush, Marco Rubio, or Hillary Clinton would immediately ask for the resignation of Janet Yellen. Trump or Sanders might. Even if they didn't, they get to appoint a replacement a year after being sworn in (subject to the confirmation of the Senate). It would not be at all surprising if Trump nominated someone as Fed chair who would be widely seen as not being especially independent. Sanders is calling for wholesale changes at the Fed, including not

allowing it to pay interest on excess reserves. He could be expected to nominate someone investors would view as out of the mainstream. The president could use the bully pulpit and propose legislation (which might be popular and Congress could have a hard time resisting) to threaten the independence of the Fed.

- **The president can hamper the American energy renaissance.** There is an argument, outlined [here](#), that the president has the authority under current law to institute a cap-and-trade system through the EPA, which could make traditional forms of energy dramatically more expensive. This would certainly be subject to legal challenges, and we are skeptical of the legal merits of this idea, but it would not be entirely surprising if Sanders' were to instruct his EPA to take a run at it. With another liberal Supreme Court appointment or two, the high court might uphold almost any environmental regulation if the EPA follows the formal rule-writing process. Sanders might also make it extremely difficult for energy companies to operate on federal lands or in federal waters. Some environmentalists are calling for a moratorium on any drilling activity on federal lands and waters. He would probably be on shaky legal ground to do this, but a determined president could gum up the works. The various federal agencies that regulate energy companies could also harass them and make it very difficult to operate.
- **The president could have an aggressive labor agenda.** Trump says he wants to deport the people who are here illegally. He could make cracking down on employers who hire illegal aliens his top law enforcement priority and shift resources to cracking down on employers. He could seek the maximum penalties against companies, even in cases where they did not know their employees were working illegally in the US. Sanders could push the NLRB, Department of Labor, OSHA and others to target industries and companies that labor unions want to organize. He could pursue new rules (even under dubious legal justification) to force near-instant card check elections where there is no secret ballot. He could use the bully pulpit to push for a minimum wage increase (which is very popular with the voters).
- **Sanders could allow drug reimportation with the stroke of a pen.** Under legislation that passed into law when President Clinton was in office, consumer drug reimportation from Canada is allowed if the Secretary of HHS is willing to certify that it can be done with no increased risk to consumers and that it would lower consumer prices. No HHS Secretary has been willing to certify this. Presumably, the HHS Secretary for Bernie Sanders would.

In addition to specific policy risk that could send the overall market and certain sectors of the market lower, there is the intangible risk associated with Trump or Sanders. We strive to stay neutral – but with our analyst hat firmly on our head – we see it as a fact that Trump is dangerously ill-informed concerning public policy, particularly issues related to national security. The country is more at risk if the commander-in-chief is someone who has not thought deeply about national security, particularly because the president has broad authority to conduct foreign policy. A big part of Trump's appeal is the perception by his supporters that he is not going to let constitutional niceties (in other words, the rule of law) get in the way of his agenda. There is evidence they are right. Both Trump and Sanders are demagogues. Sanders' agenda would likely scare business leaders and hurt hiring and capex. All of this argues for lower market multiples if they look like they have a decent chance of securing their respective nominations and winning the White House.