

# ECONOMY

Junta Control to President Trump

THINK STRATEGICALLY:

## Promesa Plunging Into the Unknown

Markets Rally Over Positive U.S.-China Trade Talks, S&P 500 Earnings Growth; Promesa Saga Continues With First Circuit Appointments Clause Decision

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### 3rd Promesa Conference to discuss all sides

On Friday, Feb. 22, the Puerto Rico Chamber of Commerce and Birling Capital will host the third conference on Promesa, the Puerto Rico Oversight, Management & Economic Stability Act. The many topics to be discussed include:

- The First Circuit Court of Appeals' decision that current Financial Oversight & Management Board (FOMB) members were unconstitutionally appointed.
- How Promesa impacts Puerto Rico's democracy.

•The fiscal plans and why Acts 20/22 are essential to Puerto Rico.

### This week in the markets: Year of the pig influencing U.S.-China talks

With the year of the pig influencing the U.S.-China trade talks with renewed vigor and the U.S. government reached an agreement to avert another federal government shutdown, this was enough fuel for stocks to extend its recent rally, with investors placing investments in strategic stocks and an increased risk in their appetite. The Dow Jones Industrial Average closed

the week at 25,883.25, a rise of 776.92 or 3.09 percent for the week, and a year-to-date (YTD) return of 11 percent; the S&P 500 closed at 2,775.60, a gain of 67.72 or 2.5 percent, and 10.7 percent YTD. The Nasdaq closed at 7,472.41, or an increase of 174.21 or 2.39 percent, and a YTD return of 12.6 percent. Meanwhile, the U.S. Treasury's 10-year note went up slightly to 2.66 percent, or an increase in yield of 1.14 percent.

While January marked the 10th-consecutive month in which there were more job openings than unemployed workers, this is more evidence of a tight labor market. On the flip side, retail sales slumped in December, falling 1.2 percent over the prior month, which was the sharpest decline since 2009.

### Drivers of the market rally

•**Investors cautiously optimistic about U.S.-China trade talks:** Reports that the U.S.-China trade talks continue to develop positively and can possibly resolve current trade tensions that have affected the markets since last year was the ignitor that allowed most stock markets to rise during the week.

•**7.35 million job openings a record high in December:** This is another strong signal from the economy, with a strong labor market a critical signal that supports modest economic

growth. However, investors must be vigilant of other economic indicators that predict a slowdown.

•**North of 65 percent of S&P 500 companies report earnings growth:** With 65 percent of S&P 500 companies having reported fourth-quarter results, earnings have grown at a 13 percent clip compared to a year ago. This makes five-straight quarters of double-digit earnings growth.

The central message of our advice to investors is to always apply a long-term view toward your investments; this will allow you to block the short-term fears that may pressure you into emotionally reacting.

### Final Word: Promesa plunging into the unknown

The First Circuit Court of Appeals held that the appointment of all members of the FOMB were unconstitutional. However, the court stopped short of dismissing the Title III bankruptcy-like cases and gave the FOMB 90 days to be reappointed or reconstituted via constitutional requirements.

### The challenge by Aurelius

The First Circuit's decision arose from a motion to dismiss the Title III proceedings filed by several affiliates of Aurelius Capital Management, which holds interests in bonds issued by Puerto Rico. Aurelius argued that the Oversight Board lacked authority to initiate the Title III proceedings because its members were appointed in violation of the Appointments Clause of the U.S. Constitution. The district court, however, disagreed and held the Appointments Clause did not apply.

### First Circuit analysis

On appeal, the First Circuit applied a three-step analysis to reverse the district court and hold that the Appointments Clause applied to the FOMB.

1. The court analyzed whether the U.S. Constitution's Territorial Clause, which grants Congress plenary power over U.S. territories, displaces the requirements of the Appointments Clause in unincorporated territories such as Puerto Rico. The district court had held this grant of plenary power

obviated the need to comply with the requirements of the Appointments Clause, but the First Circuit disagreed. Applying the canon of legal interpretation that "specific governs the general," the court held that the Territorial Clause's general grant of authority over territories does not "extend to areas where the Constitution explicitly contemplates a particular subject, such as the appointment of federal officers."

2. The First Circuit found that FOMB board members are "officers of the United States" subject to the Appointments Clause by applying a three-part test established by the U.S. Supreme Court. The test asks whether:

(a) The appointee occupies a "continuing" position established by federal law;

(b) The appointee exercises significant authority; and

(c) The significant authority is exercised under the laws of the United States.

The First Circuit held the Oversight Board members readily met these requirements.

3. FOMB members trace their authority directly and exclusively to the federal law Promesa, and their authority is exercised "according to the laws of the United States."

The First Circuit then concluded that because only the President can remove an Oversight Board member, Oversight Board members are "principal" officers of the United States whose appointment must be made by the President by and with the advice and consent of the Senate following the Appointments Clause.

The court did not invalidate the board's actions nor the parts of Promesa that do not address the board's appointments process.

The FOMB was due to be renominated by August. The big change this court ruling makes, however, is that the House and Senate previously could each nominate three members while the President could nominate one member to the FOMB. Now, President Trump can nominate all seven members for the FOMB. The question here is will Trump renominate the current board or select new members of his choosing and start anew. Knowing President Trump, get ready for a new FOMB.

*Francisco Rodríguez-Castro, president & CEO of Birling Capital, has more than 25 years of experience working with government, and multinational and public companies.*

Market Close Comparison	1/31/2019	2/28/2019	Change
Dow Jones Industrial Average	24,999.67	25,883.25	3.53%
Standard & Poor's 500	2,704.10	2,775.60	2.64%
Nasdaq	7,281.74	7,472.41	2.62%
U.S. Treasury 10-Year Note	2.63%	2.66%	1.14%