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Funds & Asset Managers – Midyear SEC Regulatory Update

Asset managers and funds face a tidal wave of new regulations in 2024 and beyond. This paper highlights newly effective regulations and provides an overview of final rules issued to date in 2024, along with updates on significant outstanding proposals.

I. Legal Challenges

On June 5, 2024, a federal appeals court struck down the SEC's private fund adviser rule (details below), agreeing with industry advocates that the agency overstepped its authority. When the final rule was issued in August 2023, the SEC cited Sections 211(h) and 206(4) of the 1940 Adviser Act and §913 of the Dodd-Frank Act as support for its authority for the new amendments to regulate private fund advisers and investors in private funds. The court concluded that the statutory language and legislative intent did not support the SEC's expansive regulatory reach over private funds, notably:

- Section 211(h) and §913 of the Dodd-Frank Act apply only to retail customers and not private fund investors.
- Section 206(4) was intended to prevent fraudulent, deceptive, or manipulative acts by investment advisers. The court noted that a duty to disclose exists only between the investment adviser and the client (the fund itself), not the investors in the fund. A failure to disclose cannot be deceptive when there was no duty to disclose.

The court ruled that Congress must explicitly give the SEC the authority to regulate private funds.

The SEC can appeal for further review with the Fifth Circuit within 45 days or request a review by the Supreme Court directly within 90 days.

Forvis Mazars will continue to monitor these legal developments. Separate industry lawsuits challenging SEC rules governing short selling, securities lending, and a broadening in the definition of a securities dealer are winding through federal courts.

II. Enforcement Actions

A. Marketing Rule

On April 12, the SEC settled charges against five registered investment advisers for Marketing Rule violations. All five firms have agreed to settle the SEC's charges and pay $200,000 in combined penalties. The SEC's orders found that the five firms advertised hypothetical performance to the general public on their websites without adopting and implementing policies and procedures reasonably designed to ensure that the hypothetical performance was relevant to the likely financial situation and investment objectives of each advertisement's intended audience, as required by the Marketing Rule. In a recent speech, Sanjay Wadhwa, deputy director, SEC Division of Enforcement, clarified the factors used to determine each penalty:

- A firm's reported regulatory assets under management (AUM).
- The nature of the regulatory history of the firm, including the nature of any prior enforcement actions.
- Whether the firm promptly remediated the non-compliant marketing materials.
- The need to send strong messages of accountability and deterrence.
- Whether a firm self-reported and cooperated with the investigation.

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B. Artificial Intelligence (AI)

Gurbir S. Grewal, director, SEC Division of Enforcement, discussed the potential enforcement risks related to AI in a **recent speech**. He noted that increased investor interest often leads to elevated investor risk and cautioned against AI washing (exaggerating AI capabilities), which could violate federal securities law. In addition, failure to disclose information regarding security risks from AI could lead to individual liability.

"I hope these actions put the investment industry on notice. If you are rushing to make claims about using AI in your investment processes to capitalize on growing investor interest, stop. Take a step back, and ask yourselves: do these representations accurately reflect what we are doing or are they simply aspirational? You must ensure that your representations regarding your use of AI are not materially false or misleading."

III. Financial Crimes Enforcement Network (FinCEN)

On February 13, 2024, the U.S. Department of the Treasury's FinCEN issued a **Notice of Proposed Rulemaking** that would require certain investment advisers to apply Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) requirements pursuant to the Bank Secrecy Act (BSA), including implementing risk-based AML/CFT programs, reporting suspicious activity to FinCEN, and fulfilling record-keeping requirements. The following would be added to the list of businesses classified as "financial institutions":

Investment advisers registered with the SEC, also known as registered investment advisers (RIAs).

Investment advisers that report to the SEC as exempt reporting advisers (ERAs).

Investment advisers generally must register with the SEC if they have more than $110 million in AUM. ERAs are investment advisers that advise only private funds and have less than $150 million in AUM in the U.S. or advise only venture capital funds. ERAs are exempt from SEC registration but still must file certain information with the SEC. Under the proposal, FinCEN would delegate examination authority for this rule to the SEC. If approved, covered investment advisers would be required to comply with the rule on or before 12 months from the final rule's effective date.

The comment period ended on April 15, 2024, and 34 letters were received with mixed feedback. Many were concerned about the impacts to smaller RIA and duplicative compliance obligations.

IV. Financial Stability Report

Overall Risks

The Federal Reserve's **April 2024 Financial Stability Report** highlighted the following near-term risks to the financial system:

- Higher-for-longer interest rates in the U.S. and other advanced economies could create strains in the global financial system.
- A worsening of global geopolitical tensions could lead to broad adverse spillovers.
- Weakness in economic activity could compound existing strains in real estate markets, both domestically and abroad, and could amplify risks to the global financial system.

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Asset Managers

The report highlighted that leverage at hedge funds reached its highest level since the beginning of Form PF data submissions. Leverage increased when measured using either average on-balance-sheet leverage (blue line in figure 3.11 below)—which captures financial leverage from secured financing transactions, such as repurchase agreements and margin loans, but does not capture leverage embedded through derivatives—or average gross leverage of hedge funds (black line in figure 3.11), a broader measure that also incorporates off-balance-sheet derivatives exposures. Leverage at the largest funds was significantly higher, with the average on-balance-sheet leverage of the top 15 hedge funds by gross asset value rising in the third quarter of 2023 to about 18-to-1 (figure 3.12). These high levels of leverage were facilitated, in part, by low haircuts on Treasury collateral in some markets where many funds obtain short-term financing. Net repurchase agreement borrowing grew to near-historic highs.

Money market funds (MMFs) and other cash-management vehicles remain susceptible to runs.

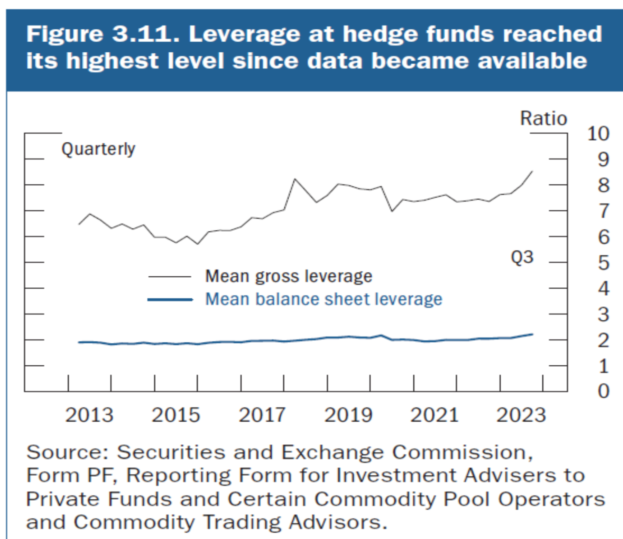

Figure 3.11. Leverage at hedge funds reached its highest level since data became available

Source: Securities and Exchange Commission, Form PF, Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors.

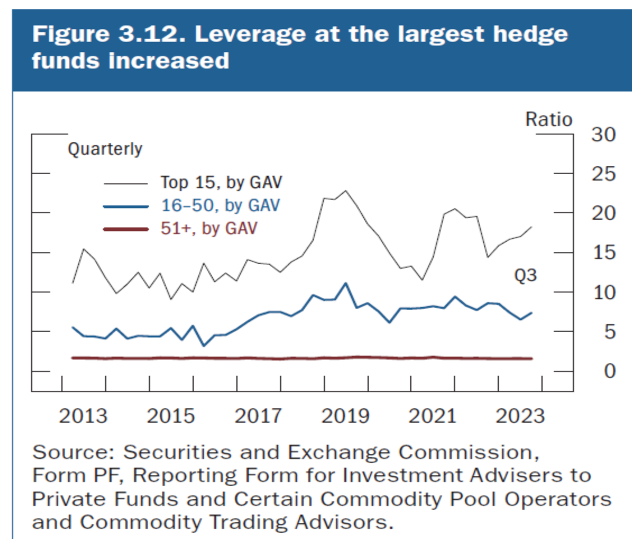

Figure 3.12. Leverage at the largest hedge funds increased

Source: Securities and Exchange Commission, Form PF, Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors.

Assets managed by MMFs increased steadily as MMFs continued to provide more attractive yields relative to most bank deposits (figure 4.4). The SEC's July 2023 final rule made significant reforms for MMFs. Increased minimum requirements for funds' daily and weekly liquid assets and elimination of temporary gates and fees linked to liquid asset levels are already in effect. Mandatory dynamic liquidity fees for institutional prime and institutional tax-exempt funds will go into effect later this year.

While the reforms help make prime and tax-exempt MMFs more resilient, these funds remain vulnerable to runs in periods of significant stress. Other cash-management vehicles, such as dollar-denominated offshore MMFs and short-term investment funds, are vulnerable to runs.

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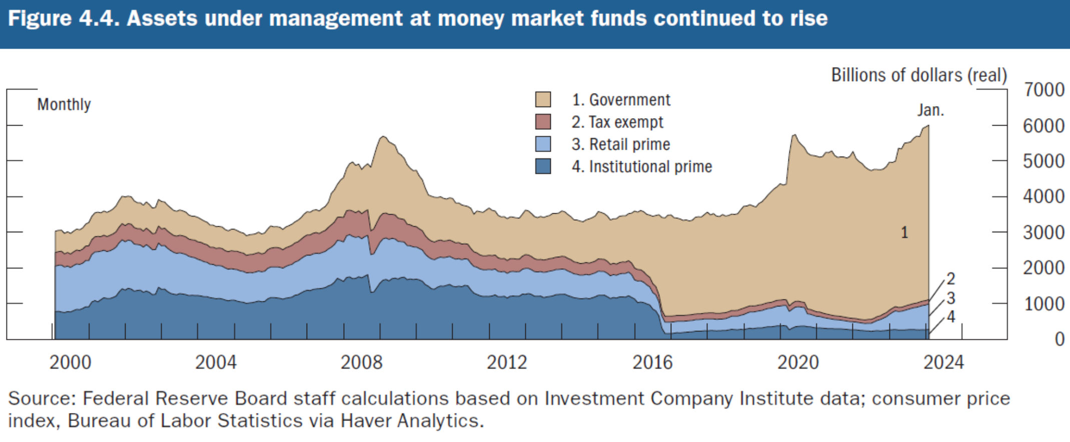
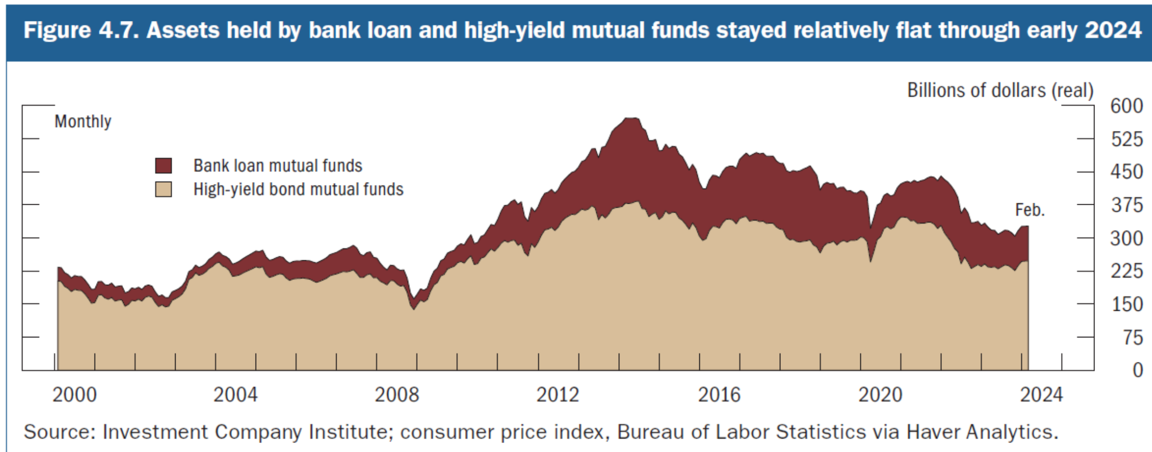
Figure 4.4. Assets under management at money market funds continued to rise



Source: Federal Reserve Board staff calculations based on Investment Company Institute data; consumer price index, Bureau of Labor Statistics via Haver Analytics.

Bond mutual funds' asset holdings stabilized, but the funds remained exposed to liquidity risks. The outstanding amount of corporate bonds held by mutual funds remained high at approximately $1.3 trillion as of the fourth quarter of 2023, roughly 13% of corporate bonds outstanding. Total AUM of the subcategories of mutual funds holding high-yield bonds and bank loans, which primarily hold riskier and less liquid assets, stabilized in recent months (figure 4.7). Bond and loan mutual funds also experienced negative returns and notable outflows during most of 2022, but outflows stabilized throughout last year and into early 2024 (figure 4.8).

Figure 4.7. Assets held by bank loan and high-yield mutual funds stayed relatively flat through early 2024



Source: Investment Company Institute; consumer price index, Bureau of Labor Statistics via Haver Analytics.

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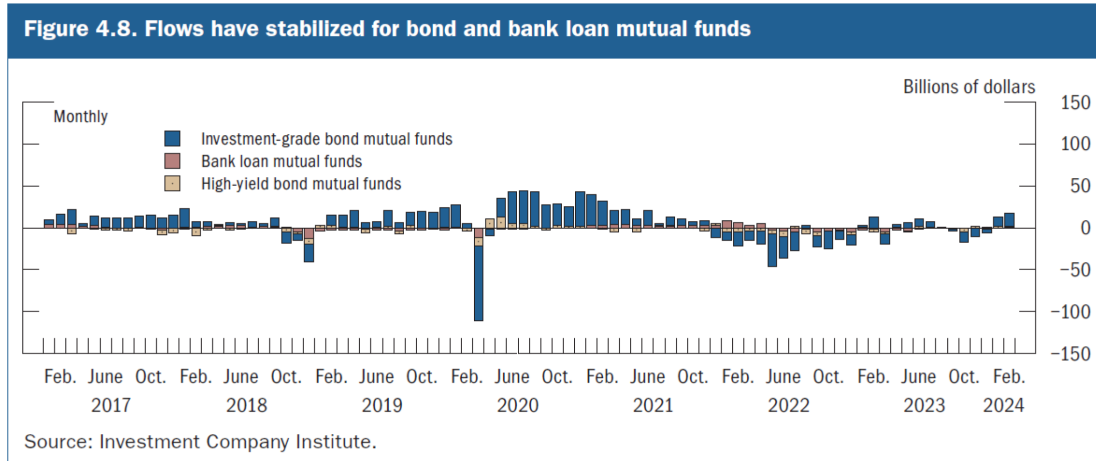

V. SEC Regulatory Agenda

The most recent reg flex agenda[1] was published in December and lists expected rulemaking priorities through April 2024. Most items have been carried forward from the spring 2023 agenda.

Given that this is an election year, any final rules issued by the SEC after May would be subject to the *Congressional Review Act* and subject to being overturned, depending on voting outcomes.

Fall 2023 Reg Flex Agenda – Division of Investment Management	
Proposals	Final Rules
Fund fee disclosure & reform	Cybersecurity risk management
	Environmental, social, and governance (ESG) investment practices
	Outsourcing by investment advisers
	Safeguarding advisory client assets
	Consumer information privacy (Regulation S-P)
	Liquidity & swing pricing open-end funds
	Predictive data & conflicts of interest

Additional details on the proposals related to these forthcoming final rules are included below.

[1]The SEC is not precluded from considering or acting on any matter not included in the agenda, and an agency is not required to consider or act on any matter that is included in the agenda.

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VI. Final Rules Issued 2024

1. Form PF Requirements

On February 8, 2024, the SEC and the Commodities Futures Trading Commission jointly adopted **Form PF amendments** that cover private funds, commodity pool operators, and commodity trading advisors. The rule will:

- Enhance reporting by large hedge fund advisers regarding qualifying hedge funds to provide better insight into the operations and strategies of these funds and their advisers and to improve data quality and comparability.
- Enhance reporting of hedge funds to provide greater insight into hedge funds' operations and strategies, to assist in identifying trends, and to improve data quality and comparability.
- Amend how advisers report complex structures to improve the ability of the Financial Stability Oversight Council (FSOC) to monitor and assess systemic risk and to provide greater visibility for both FSOC and the commissions into these arrangements.
- Remove aggregate reporting for large hedge fund advisers.

Resource: **SEC Finalizes Second Set of Form PF Updates**

2. Internet Adviser Exemption

Currently under Rule 203A-2(e), investment advisers are generally prohibited from registering with the SEC unless they either reach the $100 million in AUM threshold, advise a registered investment company (RIC), or qualify for an SEC exemption. State security authorities regulate these firms. The Internet Adviser Exemption permits SEC registration if advisory services are primarily through the internet, which is defined as fewer than 15 non-internet clients. This rule was last updated in 2002 and does not reflect evolutions in technology since then. The new **final rule** issued March 27, 2024 would narrow the use of this exemption by:

- Requiring an investment adviser relying on the exemption to at all times have an operational interactive website through which the adviser provides investment advisory services on an ongoing basis to more than one client.
- Eliminating the de minimis exception for non-internet clients. An internet investment adviser would be required to provide advice to all its clients exclusively through an operational interactive website.

Resource: **New SEC Rule Narrows Internet Adviser Exemption**

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3. Regulation S-P, Privacy of Consumer Information

On May 16, 2024, the SEC finalized updates to Regulation S-P (issued in 2000). The rule covers broker-dealers, investment companies, RIAs, and transfer agents. Changes include:

- Covered institutions must adopt written policies and procedures for an **incident response program** to address unauthorized access to or use of customer information. The incident response program should be reasonably designed to detect, respond to, and recover from unauthorized access to or use of customer information; include procedures to assess the nature and scope of any such incidents; and contain and control such incidents.
- Covered institutions must have written policies and procedures to provide **timely notification** (no later than 30 days after an incident) to affected individuals whose sensitive customer information was or is reasonably likely to have been accessed or used without authorization.
- Broadening the scope of information covered by Regulation S-P's requirements.

Resource: **SEC Issues New Regulation S-P Rules**

VII. Proposals Issued

1. Venture Capital Fund Inflation Adjustment

On February 14, 2024, the SEC **proposed** an increase to the dollar threshold for a fund to qualify as a qualifying venture capital fund under the *Investment Company Act of 1940*. The proposed threshold would be $12 million in aggregate capital contributions and uncalled committed capital, up from $10 million. This is related to an inflation adjustment that is required every five years.

Nine unique letters and 13 form letters were received with no objections to the increase.

2. Customer Identification Program (CIP)

On May 13, 2024, the SEC issued a **joint proposal** with FinCEN that would require RIAs and ERAs to establish, document, and maintain written CIPs, including procedures for:

- Verifying the identity of each customer to the extent reasonable and practicable.
- Maintaining records of the information used to verify a customer's identity, including name, address, and other identifying information.

The proposal is designed to prevent illicit finance activity involving the customers of investment advisers by strengthening the AML/CFT framework for the investment adviser sector and is generally consistent with the CIP requirements for other financial institutions, such as brokers or dealers in securities and mutual funds.

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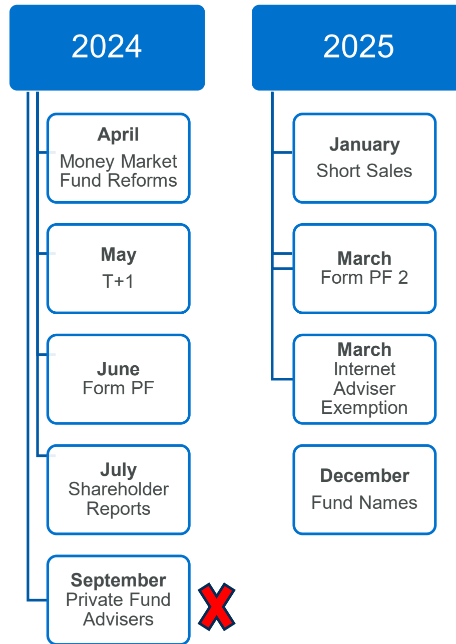
Comments are due by July 21, 2024.

VIII. Final Rules on the Horizon



1. Form PF Updates

On May 3, 2023, the SEC issued a final rule updating Form PF requirements for hedge fund and private equity (PE) fund advisers as follows:

- Require large hedge fund advisers to report certain key events within 72 hours.
- Require all PE fund advisers to report certain key events quarterly.
- Require enhanced reporting by large PE fund advisers.

Resource: SEC Finalizes First Round of Form PF Updates

2. Private Fund Adviser Rule (Struck Down, Pending Appeal)

On August 23, 2023, the SEC approved a final rule that significantly expands oversight, disclosure, and audit requirements for private funds.

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SEC-registered private fund advisers must:

- Provide investors a quarterly statement with details on fund performance, fees, and expenses.
- Obtain an annual audit for each private fund under the audit provisions of the custody rule.
- Obtain a fairness opinion for adviser-led secondary transactions.

All private fund advisers would be required to:

- Restrict certain activities without consent or disclosure.
- Prohibit certain preferential treatment unless disclosed to current and prospective investors.

All registered advisers, including those that do not advise private funds, must document the annual review of their compliance policies and procedures in writing.

Resource: SEC Finalizes Extensive Private Fund Reforms

3. Tailored Shareholder Reports & Advertising Rule Updates

The SEC approved on October 20, 2022 a final rule with comprehensive changes to the mutual fund and exchange-traded fund (ETF) disclosure framework. The rule also updates advertising rules for RICs and business development companies (BDCs) to include certain standardized figures and reasonably current information. The SEC's Division of Investment Management recently prepared responses to frequently asked questions about this rule.

Resource: New Fund Shareholder Report & Advertising Rules

4. T+1 Settlement

The final rule reduces risks in the clearance and settlement of securities as follows:

- Shorten the standard settlement cycle for securities transactions from two business days after trade date (T+2) to one business day after trade date (T+1) on May 28, 2024.
- Eliminate the separate T+4 settlement cycle for firm commitment offerings priced after 4:30 p.m.
- Improve the processing of institutional trades by proposing new requirements for broker-dealers and RIAs intended to improve the rate of same-day affirmations.

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- Facilitate straight-through processing by proposing new requirements applicable to clearing agencies that are central matching service providers.

5. Money Market Fund (MMF) Reforms

On July 12, 2023, the SEC approved a final rule making significant updates to requirements for MMFs and large liquidity advisers. Highlights include:

- Increase minimum daily and weekly liquidity requirements to 25% and 50%.
- Remove provisions on redemption gates and decouple the imposition of liquidity fees from a fund's liquidity level.
- In the most notable change from the proposal, the SEC backed away from swing pricing and instead will require institutional prime and tax-exempt MMFs to impose redemption fees. Non-government MMFs could impose a discretionary liquidity fee with board approval.
- Additional reporting requirements for large liquidity fund advisers.
- Specific guidance for a negative interest rate environment.

Resource: Sweeping Changes for Money Market Funds

6. Short Sales

On October 13, 2023, the SEC voted three to two to create new Rule 13f-2 and update the consolidated audit trail (CAT) to increase market transparency on short activity on equity securities. Institutional investment managers will be required to report certain short sale-related data to the SEC monthly, 14 days after month-end. At the end of the following month, the SEC would publicly report aggregate data about large short positions, including daily short sale activity for each individual security.

Resource: SEC Finalizes New Short Sale Disclosures

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7. Fund Name Rules

On September 20, 2023, the SEC voted four to one to issue a **final rule** updating the 20-year-old “Names Rule” to ensure that a fund’s name accurately reflects the fund’s investments and risks. Highlights of the rule include:

- Broadens the scope of the 80% investment policy requirement to cover an additional 2,200 funds. The new rule more clearly covers using “thematic” strategies—artificial intelligence, health and wellness, travel/tourism, or ESG funds.
- A fund must use a derivatives instrument’s notional amount for compliance with its 80% investment policy (excluding certain currency hedges).
- An unlisted registered closed-end fund or a BDC that is required to adopt an 80% investment policy cannot change its policy without a shareholder vote.
- A fund’s prospectus must include the definitions of terms used in its name, including the criteria used to select investments that each term describes.
- New quarterly reviews of investments are required for consistency with the 80% investment policy requirement and additional record-keeping.

Resource: SEC Updates Fund Names Rules

IX. 2023 Outstanding Proposals

1. Safeguarding Advisory Client Assets

On February 15, 2023, the SEC voted four to one to approve a **proposal** to significantly expand investor protection on advisory client assets. The proposal would:

- Expand the custody rule’s scope to cover additional client assets and add discretionary authority as a custody activity.
- Enhance the custodial protections for client assets.
- Add new custody record-keeping and reporting requirements.

If approved, the final rule would have staggered compliance dates depending on an adviser’s regulatory AUM. On August 23, 2023, the SEC reopened the comment period until October 30, 2023.

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The SEC initially received almost 300 comment letters from advisers, custodians, industry groups, and individuals. Feedback was mixed; most cited significant costs to both custodians and advisers and especially smaller entities, difficulties, potential reduction in custodying certain assets (such as derivatives, annuities, repo agreements, and loans), and an increase in advisory costs shutting out smaller individual investors.

Several hundred additional comment letters were received with the vast majority criticizing the proposed changes. The Securities Industry and Financial Markets Association's feedback was consistent with other industry participants. "Ultimately, if not significantly revised and subjected to additional review and comment, we believe that the Proposal likely would (i) significantly disrupt the operation of financial markets, (ii) restrict the ability of advisers to provide clients with investment advice for certain asset classes, (iii) limit the availability of custodial services, (iv) increase costs borne by investors, (v) result in fewer custodians for clients and advisers from which to choose, and (vi) negate the efforts and considerations taken in previous guidance issued by the SEC." There also was strong pushback from crypto and decentralized finance (DeFi) market participants.

Fed Chair Jerome Powell and acting Comptroller of the Currency Michael Hsu weighed in. "The proposed rule would, if adopted, require a significant change in custody practices at depository institutions," Powell wrote. Hsu said it "would be a departure from the usual manner in which bank custodians hold clients' cash," while its "liability and indemnification requirements would be another departure from current practice."[2]

Resource: Expansion of Adviser's Safeguarding & Custody Rules?

2. Predictive Data Analytics Use by Broker-Dealers & Investment Advisers

On July 26, 2023, the SEC issued a **proposal** that would require:

- A firm to eliminate or neutralize the effect of conflicts of interest related to the firm's use of covered technologies in investor interactions that place the firm's or its associated persons' interests ahead of investors' interests.
- Investment advisers and broker-dealers using covered technology must have written policies and procedures reasonably designed to comply with the proposal.
- Record-keeping related to the proposed conflicts rules.

"Covered technology" includes a firm's use of analytical, technological, or computational functions, algorithms, models, correlation matrices, or similar methods or processes that optimize for, predict, guide, forecast, or direct investment-related behaviors of an investor. This would generally apply to use of a covered technology in a firm's engagement or communication with an investor, including by exercising discretion with respect to an investor's account, providing information to an investor, or soliciting an investor.

[2] "Powell, Hsu voice concerns to Barr over SEC crypto custody rule," politicopro.com, February 1, 2024.

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One hundred and thirty-six comments were received with universally negative feedback noting that the changes would harm both investors and the trading markets. Many felt that some of the recent tech innovations have brought a younger and more diverse group of investors into the capital markets and on a path to long-term financial security and generational wealth. The academic community weighed in, challenging the data used to support the proposed legislation. Others suggested that new disclosure would be more appropriate and a less costly approach to address conflicts of interest. Industry participants and trade groups cited the proposal's overly broad scope, existing regulatory protections, and the SEC's lack of statutory authority to make these changes.

3. Registration for Index-Linked Annuities

On September 29, 2023, the SEC issued a 420-page **proposal** that would update registration, disclosure, and advertising requirements for registered index-linked annuities (RILAs). Added details to be included on an updated Form N-4 would include RILA risks and features. If approved, RILA offerings would be handled more like variable annuity offerings. Other changes to Form N-4 would be applicable to all insurers that file that form. If approved, mandatory compliance with Form N-4 updates would start one year after a final rule is published in the **Federal Register**, although the new form could be used as soon as a final rule is adopted.

Resource: **SEC Changes Coming to Registered Annuities?**

Sixteen comment letters were received with universal support for use of Form N-4. The American Council of Life Insurers had the following additional suggestions: (1) adjust the language and formatting of disclosures to limit investor confusion; (2) extend marketing rules that create consistency between RILAs and other annuities; (3) make Form N-4 the default registration form for new registered insurance products; and (4) to not modify the Key Information Table (KIT) format or require restatement of information disclosed in Overview of the Contract and KIT.

X. 2022 Outstanding Proposal

1. Liquidity & Swing Pricing for Open-End Funds

On November 2, 2022, the SEC issued a 400-plus-page **proposal** that would significantly change liquidity risk management and pricing practices for open-end management investment companies:

- Update the classification of investment liquidity and require a minimum of 10% of highly liquid assets.
- Require the use of swing pricing and implement a hard close.
- Monthly, timelier, and more detailed public reporting of fund information.

The changes would not apply to MMFs or certain ETFs. If adopted, the final rule would have a two-year compliance date for the swing rule changes and allow one year to implement the liquidity updates.

Resource: **Funds Face New Liquidity & Swing-Pricing Requirements**

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More than 2,500 letters were received. Individual investors supported the amendments. Service providers, advisers, and adviser advocacy groups pushed back on the following points: overlap with existing fiduciary rules and pricing service rules in Rule 2a-5, implementation costs understated and prohibitive to smaller investment advisers, implementation time too short given scope of change, and other regulatory updates.

2. Outsourcing by Investment Advisers

On October 26, 2022, the SEC issued a **proposal** seeking feedback on new minimum due diligence and monitoring requirements for investment advisers who outsource certain covered services:

- Advisers must conduct due diligence before outsourcing and periodically monitor service providers' performance and reassess whether to retain them. Oversight must be documented and detailed information on service providers would be required on Form ADV.
- Enhanced due diligence and monitoring will be required for third-party record-keepers.

If approved, the compliance date would be 10 months from the rule's effective date.

Resource: New Outsourcing Rules for Investment Advisers?

Ninety letters were received. Individual investors supported the amendments. Service providers, advisers, and adviser advocacy groups pushed back on the following points: overlap with existing fiduciary rules and pricing service rules in Rule 2a-5; implementation costs understated and prohibitive to smaller investment advisers; implementation time too short given scope of change and other regulatory updates; scope clarification/exemptions for regulated banks; bank-affiliated RIAs, qualified custodians, and index providers; potential cyberthreats from required vendor disclosure; and lack of jurisdiction over service providers.

3. ESG Disclosures for Investment Advisers & Investment Companies

On May 25, 2022, the SEC issued a 362-page **proposal** with new rules and disclosures to give investors consistent, comparable, and reliable information on funds' and advisers' use of ESG factors. The changes would apply to RICs and BDCs, collectively "funds," and RIAs and certain unregistered advisers, collectively "advisers." Highlights include:

- New disclosures on ESG strategies in fund prospectuses, annual reports, and adviser brochures.
- Implementing a layered, tabular disclosure approach for ESG funds to allow investors to easily compare ESG funds.
- Greenhouse gas emissions disclosure would be required for certain environmentally focused funds for portfolio investments

Resource: Investment Advisers & Companies Face New ESG Disclosures

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Almost 200 comment letters were received. There was universal support for consistent standards. Investor groups supported the changes while investment funds and industry groups suggested improvements to address the vagueness of the terms, materiality consideration, consistency with global standards, and application to fixed income funds. Commenters challenged the three required buckets, primarily the ESG integration category. The energy and timber sectors felt these rules could negatively impact fund investments held. NASDAQ noted the rule could disincentivize funds and advisers from considering ESG investment strategies. The Forum for Sustainable and Responsible Investment noted, "Some aspects of the Proposal do not align with real-world fund investment approaches or investor informational needs." Several respondents, including the Securities Industry and Financial Markets Association and the attorneys general from several states, cited *West Virginia v. EPA*. Others urge a final rule on ESG reporting before these changes to investment advisers.

4. Cybersecurity – Investment Advisers

On February 9, 2022, the SEC **proposed** new rules to enhance cybersecurity preparedness and improve the resilience of investment advisers and investment companies against cybersecurity threats and attacks as follows:

- Require advisers and funds to adopt and implement written policies and procedures reasonably designed to address cybersecurity risks.
- Require advisers to report significant cybersecurity incidents to the SEC on proposed Form ADV-C within 48 hours.
- Enhance adviser and fund disclosures related to cybersecurity risks and incidents.
- Require advisers and funds to maintain, make, and retain certain cybersecurity-related books and records.

Seventeen comment letters were received at the end of the first comment period. Feedback mirrored comments on the registrant's cyber proposal above. Several funds requested more flexibility in implementing any new cyber rules, especially smaller funds. Many felt that administratively, cyber rule setting should not be under the anti-fraud provisions but rather under the general rulemaking authority. After the second reopened comment period, an additional 84 comment letters were received. According to the **Investment Adviser Association**, "The Commission has severely underestimated the costs of the Adviser Proposals – both in isolation and on a cumulative basis – for all advisers, and especially for smaller advisers. At the same time, it has, in our view, overestimated the potential benefits, and we are concerned that the Adviser Proposals collectively will harm rather than further the Commission's stated goals. … Before taking final action on the Adviser Proposals, seek public feedback on a comprehensive implementation timeline for tiered and staggered compliance requirements and dates for all these proposals." Most industry participants felt 48 hours was too short for reporting and most requested an extended implementation period.

XI. Conclusion

The asset management team at Forvis Mazars has more than 50 years of experience providing accounting, tax, and consulting services to various types of investment holdings, including conventional debt and equity investments, loans, businesses, alternative investments, and other unique assets. As of June 2023, Convergence Optimal Performance ranked Forvis Mazars as a top 20 accounting and audit firm to RIAs and ranked in the top 20 by AUM. We have experience providing services to funds ranging from emerging managers to $100-plus billion in

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AUM. Our knowledge allows us to provide tailored services to help meet your unique needs. We provide services to private, public, and Cayman funds. For more information, visit **forvismazars.us**.

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