SEC Regulatory Outlook 2025

Asset Managers & Investment Companies

January 2025

Contents

Introduction 3

I. SEC Updates 3

II. Enforcement Actions 3

III. Exam Priorities 4

IV. Regulatory Agenda 6

V. Rule Setting 4Q 2024 7

VI. Final Rules – Newly Effective & on the Horizon 7

Conclusion 15

Contributors 15

Introduction

This paper provides an overview of recent standard-setting activity by the SEC's Division of Investment Management, reminders on newly effective rules, updates on the SEC's regulatory agenda, recent enforcement actions, and exam priorities.

I. SEC Updates

Both SEC Chair Gary Gensler and Democratic Commissioner Jaime Lizárraga have announced their intent to step down in January 2025. President-elect Donald Trump has announced Paul Atkins as his nominee for the SEC chair.[1] Atkins previously served as a commissioner from 2002 to 2008. Democratic Commissioner Caroline Crenshaw's term ended in June 2024 and she can serve at the SEC until December 2025 if not confirmed by the Senate for another term.

Atkins will require Senate approval and based on prior administrative turnovers, this could happen as soon as April or May 2025. Under SEC quorum rules, a three-member commission can only advance a regulation if all the commissioners participate in a vote.

In presidential election years, any regulations passed within the previous 60 legislative days are subject to the *Congressional Review Act* (CRA) and could be overturned. Unraveling existing rules outside the CRA is not a fast process. Once a new chair is named and confirmed, a majority of the five-person commission is required for any proposal and final rules, which also are subject to the *Administrative Procedure Act*. The SEC chair sets the enforcement agenda and could instruct SEC staff not to pursue cases for certain rules. The SEC chair also can stop agency lawyers from defending existing legal challenges in court. Congress also could attach a rider to legislative funding to the SEC prohibiting the agency from enforcing certain rules.

The SEC's directors of Enforcement, Trading and Markets, and Corporation Finance have announced their resignations. The customary process is for interim acting directors to serve until the incoming SEC chair names new directors in 2025. Enforcement actions are likely to continue in the short term since the vast majority of cases are fraud related. By mid-2025, with a new chair and directors in place, it is anticipated that there could be a change in the size of corporate penalties and enforcement actions for compliance, control, and record-keeping failures in the absence of fraud.

As noted above, three commissioners are required for a vote on proposals and final rules; however, under *the Sunshine Act*, the two Republican commissioners could meet and begin planning a new regulatory agenda even before a new chair is confirmed. Republican Commissioners Hester Peirce and Mark Uyeda both worked with Atkins at the SEC during his previous tenure.

II. Enforcement Actions

Artificial Intelligence (AI)

On October 10, 2024, the SEC settled with several parties for raising money for an investment adviser that was falsely described as having an AI-driven platform for trading securities.

[1] "Trump nominates cryptocurrency advocate Paul Atkins as SEC chair," apnews.com, December 4, 2024.

"As AI becomes more popular in the investing space, we will continue to be vigilant and pursue those who lie about their firms' technological capabilities and engage in 'AI washing'."
Andrew Dean, co-chief of the SEC's Asset Management Unit

Greenwashing

The SEC is continuing with high-profile enforcement actions on greenwashing. On October 21, 2024, the SEC charged an investment adviser for misstatements and compliance failures on an investment strategy that was marketed as incorporating environmental, social, and governance (ESG) factors. According to the SEC's allegations, the prospectuses for three ESG-marketed, exchange-traded funds stated that the funds would not invest in companies involved in certain products or activities, including fossil fuels and tobacco. However, these funds invested in fossil fuels and tobacco companies, including in coal mining and transportation, natural gas extraction and distribution, and retail sales of tobacco products. The adviser used data from third-party vendors that did not properly screen companies, and the adviser did not have any policies and procedures over the screening process.

On November 8, 2024, the SEC reached a $17.5 million settlement with a large mutual fund adviser. The adviser advertised that 70% to 94% of assets under management were "ESG integrated." The SEC found a substantial amount of assets held in passive exchange-traded funds that did not consider ESG factors and the fund company did not have written policies on what ESG integration meant.

"… investment advisers must do what they say and say what they do. When investment advisers represent that they will follow particular investment criteria, whether that is investing in, or refraining from investing in, companies involved in certain activities, they have to adhere to that criteria and appropriately disclose any limitations or exceptions to such criteria."
"Companies should be straightforward with their clients and investors rather than seeking to capitalize on investing trends and buzzwords."

Sanjay Wadhwa, acting director of the SEC's Division of Enforcement

Cherry-Picking

On November 25, 2024, the SEC charged an asset manager's chief investment officer with allocating favorable trades to certain accounts and unfavorable trades to other portfolios.

"Investment advisers are at all times obliged to perform their functions, including trade allocations, in a manner that puts their clients' interests first. "

Sanjay Wadhwa, acting director of the SEC's Division of Enforcement

III. Exam Priorities

On October 21, 2024, the SEC's Division of Examinations (Division) issued its Fiscal Year 2025 Examination Priorities that support its stated mission—promote compliance, prevent fraud, monitor risk, and inform policy. The group will continue its focus on compliance, governance practices, and cybersecurity.

Investment Advisers

As in previous years, the Division will prioritize examinations of advisers that have never been examined or not been recently examined with a continued focus on newly registered advisers.

Fiduciary Standards of Conduct. An adviser must, at all times, serve the best interest of its clients and must not place its own interests ahead of the client's interests. An adviser also must eliminate or make full disclosure of all conflicts of interest. The Division will continue to focus on:

- Investment advice provided to clients and if that advice satisfies client fiduciary obligations. Focus will be on recommendations for high-cost products, unconventional instruments, illiquid and difficult-to-value assets, and assets sensitive to higher interest rates or changing market conditions, including commercial real estate.
- The impact of advisers' financial conflicts of interest on providing impartial advice and best execution, with consideration given for non-standard fee arrangements.
- For dual registrants and advisers with affiliated broker-dealers, exams will concentrate on:
  - Assessing investment advice and recommendations to determine if they are suitable for clients' advisory accounts
  - Reviewing disclosures to clients regarding the capacity in which recommendations are made
  - Reviewing the appropriateness of account selection practices, *e.g.*, brokerage versus advisory, including rollovers from an existing brokerage account to an advisory account
  - Assessing if and how advisers adequately mitigate and fairly disclose conflicts of interest

Compliance Program Effectiveness. These examinations generally include an evaluation of the core areas of advisers' compliance programs, including marketing, valuation, trading, portfolio management, disclosure and filings, and custody, as well as an analysis of the annual review of an adviser's compliance program effectiveness. Focus areas include:

- Fiduciary obligations of advisers that outsource investment selection and management
- Alternative revenue sources
- Appropriateness and accuracy of fee calculations and the disclosure of fee-related conflicts (select clients negotiating lower fees when similar services are provided to other clients at a higher fee rate)

Private Funds. For advisers to private funds, focus areas include reviewing:

- If disclosures are consistent with actual practices and if an adviser met its fiduciary obligations in periods of market volatility or interest rate fluctuations, *e.g.*, commercial real estate, illiquid assets, and private credit. Advisers to private funds that are experiencing poor performance and significant withdrawals and/or hold more leverage or difficult-to-value assets will be scrutinized.
- The accuracy of calculations and allocations of private fund fees and expenses (both fund-level and investment-level). The Division will be looking at the valuation of illiquid assets, calculation of post-commitment period management fees, offsetting of fees and expenses, and the disclosure adequacy.
- Disclosure of conflicts of interests and risks, and adequacy of policies and procedures, especially for the following situations:
  - Use of debt, fund-level lines of credit, investment allocations, adviser-led secondary transactions, and transactions between funds
  - Investments held by multiple funds
  - Use of affiliated service providers
- Compliance with recently adopted SEC rules, including amendments to Form PF and investment adviser marketing.

Investment Companies

For registered investment companies (RICs), exams will evaluate compliance programs, disclosures, and governance practices focusing on:

- Fund fees and expenses, and any associated waivers and reimbursements
- Oversight of service providers (both affiliated and third party)
- Portfolio management practices and disclosures, for consistency with claims about investment strategies or approaches and with fund filings and marketing materials
- Issues associated with market volatility
- Exposure to commercial real estate
- Compliance with new and amended rules

IV. Regulatory Agenda

At the time of publication, the most recent document was the Spring 2024 Regulatory Agenda released in July 2024. The Fall Regulatory Agenda was submitted in September 2024 before the election and Gensler's resignation announcement. The new chair is likely to set different priorities.

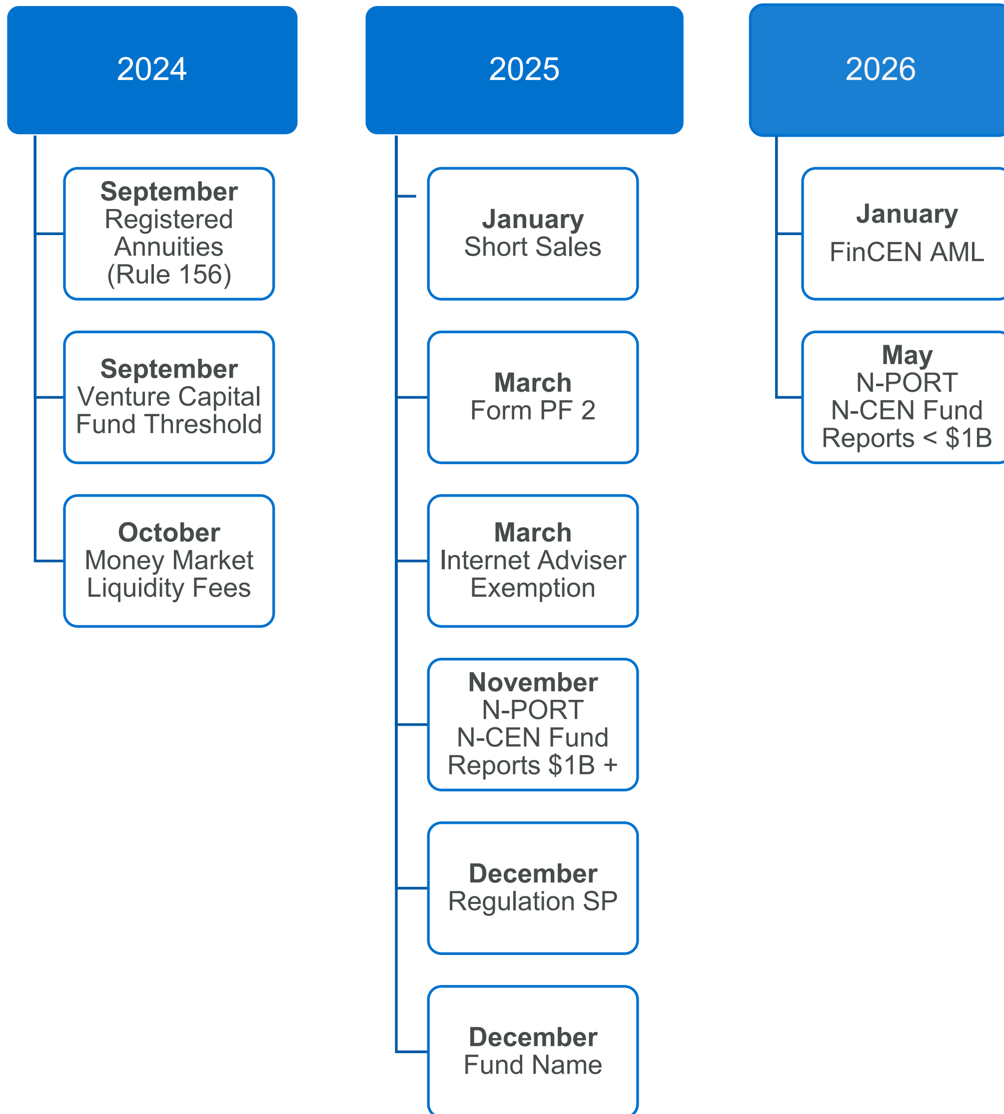
Spring 2024 Reg Flex Agenda – Division of Investment Management	
Planned Proposals (Remaining)	**Planned Final Rules (Remaining)**
Fund fee disclosure and reform	Cybersecurity risk management
Safeguarding advisory client assets*	ESG investment practices
Open-end fund liquidity risk management*	Outsourcing by investment advisers
Predictive data and conflicts of interest*	
*Re-exposure	
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.	

V. Rule Setting 4Q 2024

1. Private Fund Adviser Rule – Vacated

On June 5, 2024, the U.S. Court of Appeals for the Fifth Circuit vacated the August 2023 private fund advisor rule that would have significantly expanded oversight, disclosure, and audit requirements for private funds. The rule would have been effective beginning in September 2024. On November 8, 2024, the SEC adopted technical amendments to reflect the courts vacatur of this rule, which was effective on November 19, 2024, the date of **Federal Register** publication.

VI. Final Rules – Newly Effective & on the Horizon



2024

1. Registration for Index-Linked Annuities

On July 1, 2024, the SEC issued a final rule updating registration, disclosure, and advertising requirements for registered index-linked annuities and registered market value adjustment annuities, which will now be handled more like variable annuity offerings. In certain cases, issuers of these products will now be able to file financial statements prepared under Statutory Accounting Principles rather than GAAP. While mandatory compliance with Form N-4 begins in 2026, the new form could be used as soon as a final rule is adopted.

Resource: SEC Finalizes Changes for Certain Registered Annuities

2. Venture Capital Fund Inflation Adjustment

A qualifying venture capital fund is a private fund that can be exempt from SEC registration as an investment company under the *Investment Company Act of 1940* if the fund has no more than 250 beneficial owners and is below a certain threshold of assets, currently $10 million. On August 21, 2024, the SEC issued a final rule increasing this to $12 million in aggregate capital contributions and uncalled committed capital. This inflation adjustment is required every five years.

Currently, there are 36,819 venture capital funds, of which 25,822 are qualifying venture capital funds. The SEC estimates there are only five venture capital funds that are not currently excluded from registration but could be after the threshold increase. When the threshold is increased to $12 million, a fund near the current $10 million in aggregate capital contributions and uncalled capital commitments, with more than 100 but less than 250 beneficial owners, will have additional room to raise capital while remaining a qualifying venture capital fund.

The final rule also will allow the SEC to make future inflation adjustments by order rather than the formal rulemaking process.

3. 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

2025

1. 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

2. 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 **hedge fund** reporting 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

3. 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 assets under management (AUM) threshold, advise a 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 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

4. Form N-PORT, Form N-CEN Reporting, & Fund Liquidity Risk Guidance

On August 28, 2024, the SEC voted three to two to issue a final rule requiring monthly reporting of fund portfolio holdings by registered open-end funds, registered closed-end funds, and exchange-traded funds (ETFs) organized as a unit investment trust. Open-end funds also would be required to disclose details on service providers used for liquidity risk management. In response to feedback, the SEC dropped more extensive changes that included swing pricing, public reporting of liquidity classifications, and increased frequency of Reg S-X-compliant portfolio information.

Resource: SEC Updates N-PORT & N-CEN Reports for Funds

5. 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, registered investment advisers (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

6. 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 business development company (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

2026

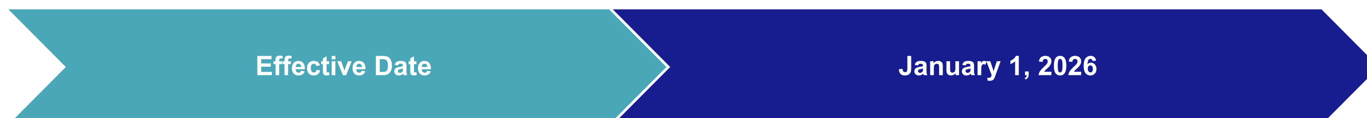
1. Anti-Money Laundering (FinCEN)

On August 28, 2024, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued a **final rule** that updates the definition of "financial institutions" that are required to comply with anti-money laundering law and file suspicious activity reports required by the *Bank Secrecy Act*. The amendments add "investment adviser" to the definition of "financial institution" and define investment advisers to be SEC-registered investment advisers and exempt reporting advisers (ERAs). The final rule excludes RIAs that register with the SEC solely because they are:

- Midsize advisers
- Multi-state advisers
- Pension consultants
- RIAs that do not report any AUM on Form ADV

For advisers that have their principal office and place of business outside the U.S., the rule only applies to activities that take place within the U.S., including through the involvement of U.S. personnel of the investment adviser (branch or office within the U.S.) or providing services to a U.S. person or a foreign-located private fund with an investor who is a U.S. person. The final rule does not cover foreign private advisers or family offices.

The final rule does not exempt investment advisers from the requirements to file Currency Transaction Reports, adhere to the Recordkeeping and Travel Rules, or other general record-keeping requirements. However, investment advisers may deem these requirements satisfied for any mutual funds, bank- and trust company-sponsored collective investment funds, or any other investment adviser they advise subject to this rule that is already subject to anti-money laundering and countering the financing of terrorism (AML/CFT) program requirements.



VII. Outstanding Proposals

1. 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.

Resource: Advisers Face Sweeping New SEC & FinCEN Customer Rules

The 27 respondents broadly supported AML initiatives. Investor groups felt the proposal did not go far enough to identify the underlying customer. Industry lobby groups highlighted potential interaction and duplication with an AML proposal issued by FinCEN in February (a final rule was issued on August 28, 2024). This CIP proposal is conditioned on the adoption of the expanded definition of "financial institutions" outlined in the AML proposal making it challenging to evaluate the scope. Multiple respondents requested harmonization of rules for banks, broker-dealers, mutual funds, and other financial institutions already subject to CIP obligations. Specific exemptions were requested for employer-sponsored retirement funds, closed-end funds, unit investment trusts, and BDCs. Respondents sought clarity on the customer account definition and level of look through, *e.g.*, limited partnerships, customer with assets held at a qualified custodian, transferred accounts, private fund versus underlying investors, or sub-advisors. The U.S. Small Business Administration noted the proposal does not appropriately estimate the potential impact on small entities.

2. Safeguarding Advisory Client Assets (to Be Re-Exposed)

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.

Feedback was mostly negative; most cited significant costs to both custodians and advisers (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. The Securities Industry and Financial Markets Association noted: "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.

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

3. Predictive Data Analytics Use by Broker-Dealers & Investment Advisers (to Be Re-Exposed)

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 conflict 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 the 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.

> Comments were universally negative, 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.

4. Liquidity & Swing Pricing for Open-End Funds (to Be Re-Exposed)

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.

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

> While 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.

5. 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.

6. 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

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.

7. 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 in the first comment round. 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. In the second comment round, 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.

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

Contributors

Brian Matlock
Partner/Financial Services
Private Funds Leader
brian.matlock@us.forvismazars.com

Anne Coughlan
Director
anne.coughlan@us.forvismazars.com

© 2025 Forvis Mazars, LLP. All rights reserved.