

MEMO# 31822

June 24, 2019

ICI Summary of Spring 2019 Regulatory Flexibility Agendas

[31822]

June 24, 2019 TO: ICI Members

ICI Global Members SUBJECTS: Advertising

Closed-End Funds

Derivatives

Exchange-Traded Funds (ETFs)

Fixed Income Securities

Investment Advisers

Systemic Risk

Trading and Markets

Transfer Agency

Variable Insurance Products RE: ICI Summary of Spring 2019 Regulatory Flexibility Agendas

This memorandum summarizes the Spring 2019 short-term regulatory flexibility agendas for the Securities and Exchange Commission,[\[1\]](#) Commodities Futures Trading Commission,[\[2\]](#) Department of the Treasury,[\[3\]](#) and the Federal Reserve Board.[\[4\]](#) It focuses on the agenda matters that affect registered investment companies. The agencies publish these agendas twice annually, and they are intended to make transparent the content and timing of the agencies' expected rulemaking. Relevant portions of each of the agencies' agendas and links to related ICI comment letters are provided below.

SEC Chairman Jay Clayton publicly indicated his commitment to using the agenda to reflect the SEC's actual agenda, and the SEC successfully completed many of the rulemakings noted on the past few agendas within, or even more quickly than, the expected timing for action.[\[5\]](#) Consistent with this, the SEC already finalized these agenda items:

- a rulemaking package addressing standards of conduct for broker-dealers and investment advisers;
- amendments to the auditor independence rules; and
- the capital, margin and segregation requirements for security-based swap dealers and capital requirements for broker-dealers.[\[6\]](#)

In addition, the Commission issued two proposals on the agenda:

- closed-end fund offering reform; and
- fund of fund arrangements.[\[7\]](#)

The Commission also plans to issue additional eight proposals and adopt another four rules by April 2020.

The CFTC already issued three proposals[\[8\]](#) on the agenda. It is planning to issue eight more proposals and adopt another five rules by December 2019.

The Treasury Department is expected to adopt one final rule by December 2019.

The Board is soliciting comments for one proposed rule.

SEC

Recently Issued SEC Final Rules and Interpretive Releases

On June 5, 2019, the SEC published the following four items related to standards of conduct for broker-dealers and investment advisers:

- **Regulation Best Interest: The Broker-Dealer Standard of Conduct** – The rule establishes a standard of conduct for broker-dealers when they make a recommendation to a retail customer of any securities transaction or investment strategy involving securities. ICI filed comment letters in August 2017,[\[9\]](#) February 2018,[\[10\]](#) and August 2018.[\[11\]](#) To assist firms with planning for compliance with these new rules, the Commission is establishing an Inter-Divisional Standards of Conduct Implementation Committee.
- **Form CRS Relationship Summary** – Registered investment advisers and registered broker-dealers will be required to provide a brief relationship summary to retail investors.
- **Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation** – The Commission finalized an interpretation of the standard of conduct for investment advisers under the Investment Advisers Act.
- **Commission Interpretation Regarding the Solely Incidental Prong of the Broker-Dealer Exclusion from the Definition of Investment Adviser** – The Commission published an interpretation of section 202(a)(11)(C) of the Investment Advisers Act, which excludes from the definition of “investment adviser” any broker or dealer that provides advisory services when such services are “solely incidental” to the conduct of the broker or dealer’s business and when such incidental advisory services are provided for no special compensation.

ICI recently published a memorandum summarizing the rulemaking package.[\[12\]](#)

Auditor Independence with Respect to Loans or Debtor-Creditor Relationships –

On June 18, 2019, the Commission adopted amendments to rule 2-01(c)(1)(ii)(A) of Regulation S-X regarding the independence of an accountant when the accountant has a lending relationship with an entity that holds equity securities of the accountant’s audit client. ICI filed a joint comment letter with the Independent Directors Council in July 2018.[\[13\]](#)

Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Capital Requirements for Broker-Dealers – On June 21, the Commission adopted these requirements pursuant to section 764 of the Dodd Frank Act. ICI filed comment letter in November 2018.[\[14\]](#)

Recently Issued SEC Proposals

Fund of Funds Arrangements – On December 19, 2018, the Commission proposed allowing funds to acquire shares of other funds, including arrangements involving exchange-traded funds, without first obtaining exemptive orders. ICI filed a comment letter in April 2019.[\[15\]](#)

Securities Offering Reform for Closed-End Investment Companies and Business Development Companies – The Commission issued this proposal on March 20, 2019 to implement section 803 of the Small Business Credit Availability Act and section 509 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. ICI filed a comment letter on June 10, 2019.[\[16\]](#)

SEC's Expected Proposals

Rule 14a-8 Amendments –The Division of Corporation Finance is considering recommending that the Commission propose rule amendments regarding the thresholds for shareholder proposals under Rule 14a-8. The proposal is expected by April 2020.

Rule 14a-2(b) Amendments –The Division of Trading and Markets is considering recommending that the Commission propose rule amendments to address certain advisors' reliance on the proxy solicitation exemptions in Rule 14a-2(b). The proposal is expected by April 2020.

Use of Derivatives by Registered Investment Companies and Business Development Companies – The Division of Investment Management is considering recommending that the Commission re-propose a new rule designed to enhance the regulation of funds' use of derivatives. The first proposal and comment period were completed in 2015-2016, and the second proposal is expected by April 2020. ICI filed comment letters in March,[\[17\]](#) July,[\[18\]](#) and September 2016.[\[19\]](#)

Amendments to the Marketing Rules Under the Advisers Act – The Division of Investment Management is considering recommending that the Commission propose amendments to rules 206(4)-1 and 206(4)-3 under the Investment Advisers Act regarding marketing communications and practices by investment advisers. The proposal is expected by September 2019.

Amendments to the Custody Rules for Investment Companies and Investment Advisers – The Division of Investment Management is considering recommending that the Commission propose amendments to rules concerning custody under the Investment Company Act and the Investment Advisers Act. The proposal is expected by April 2020.

Amendments to Procedures for Applications Under the Investment Company Act – The Division of Investment Management is considering recommending that the Commission propose amendments to Rule 0-5 under the Investment Company Act to establish an expedited review procedure for certain applications. The proposal is expected by April 2020.

Transfer Agents Regulatory Update – The Division of Trading and Markets is considering recommending that the Commission propose updates and refinements to the Commission's transfer agent regulatory regime to update the existing regulatory framework. The Commission issued a concept release in December 2015, and ICI filed a comment letter in March 2016.[\[20\]](#) The proposal is expected by September 2019.

Customer Margin Requirements for Securities Futures – The Division of Trading and Markets is considering recommending that the Commission, jointly with the CFTC, propose amendments to the customer margin requirements for security futures. The proposal is expected by April 2020.

SEC's Expected Final Rules

Extending the Testing the Waters Provision to Non-Emerging Growth Companies – The Commission proposed amendments to extend the testing of the waters provision to non-emerging growth companies in February 2019, and ICI filed a comment letter in April 2019.[\[21\]](#) The final rule is expected by April 2020.

Exchange-Traded Funds – The Commission issued a proposal to allow certain exchange-traded funds to operate without first obtaining exemptive orders in July 2018, and ICI filed a comment letter in September 2018.[\[22\]](#) Final action on the proposal is expected by September 2019.

Enhanced Disclosure for Separate Accounts Registered as Unit Investment Trusts and Offering Variable Insurance Products – The Commission proposed rules designed to provide variable insurance products investors with more user-friendly disclosure in October 2018. ICI filed a comment letter in February 2019.[\[23\]](#) The final rules are expected by April 2020.

Prohibitions and Restrictions on Proprietary Trading and Certain Interests In, And Relationships with Hedge Funds and Private Equity Funds (Volcker Rule) – The Commission proposed amendments to the SEC's existing rule implementing section 619 of the Dodd-Frank Act, commonly referred to as the Volcker Rule. ICI filed comment letters in September 2017[\[24\]](#) and October 2018.[\[25\]](#) Final action is expected by December 2019.

CFTC

CFTC'S Recent Proposals

Post-Trade Name Give-Up on Swap Execution Facilities – The CFTC requested public comments regarding the practice of post-trade name give-up on swap execution facilities in November 2018. ICI filed a letter in January 2019.[\[26\]](#) It is unclear at this point what action the CFTC may take next.

17 CFR Parts 23, 43, 45, and 49 Certain Swap Data Repository and Data Reporting Requirements – The CFTC proposed amendments to parts 23, 43, 45, and 49 of its regulations to improve the accuracy of data reported to, and maintained by, swap data repositories (SDRs). The proposal was issued on May 13, 2019, and the comment period ends on July 29, 2019.

Derivatives Clearing Organization General Provisions and Core Principles – The CFTC proposed amendments to Part 39 that would, among other things, address certain risk management and reporting obligations, clarify the meaning of certain provisions, simplify processes for registration and reporting, and codify existing staff relief and guidance. The proposal was issued on May 16, 2019, and the comment period ends July 15, 2019.

CFTC's Expected Proposals

Reducing Regulatory Burden: Retrospective Review Under E.O. 13563 - The CFTC intends to continue its review of existing regulations to evaluate their continued effectiveness in achieving the objectives for which they were adopted. The Commission expects to start soliciting comments by October 2019.

Bankruptcy Rules - The CFTC is expected to propose changes to part 190 to update its bankruptcy regulations, based in part on a proposal submitted as part of Project KISS. The proposal was expected in May 2019.

Amendments to Organizational and Reporting Requirements for Commodity Pool Operators; Technical Corrections - The Commission is expected to propose amendments to its regulations governing Commodity Pool Operators (CPOs). The proposal is expected in June 2019.

Amendments to Regulations Governing Futures Commission Merchants, Swap Dealers, Introducing Brokers and Retail Foreign Exchange Dealers - The CFTC is expected to propose amendments that would revise the duties of public accountants in performing audits of futures commission merchants (FCMs), codify regulatory relief regarding the receipt of customer funds by FCMs, revise certain regulatory notices required of FCMs, codify regulatory relief regarding the holding of customer funds by FCMs for foreign futures and foreign options transactions, and revise certain procedures regarding the bulk transfers of customer accounts. The proposal is expected in June 2019.

Part 43 Swap Data Plan - The CFTC is expected to propose changes to part 43 of the real-time public reporting rules that may modify real-time reporting regulations in light of goals of liquidity, transparency, and price discovery in the swaps market. The proposal is expected in June 2019.

Part 45 Swap Data Plan - The CFTC is expected to propose additional changes to part 45 that would integrate existing staff guidance, clarify and amend certain provisions, and streamline certain existing obligations. The proposal is expected in June 2019.

Part 49 Verifications Rulemaking - The CFTC is expected to propose additional changes to part 49 that would integrate existing staff guidance, clarify and amend certain provisions, and introduce additional requirements for swap data repositories towards the ultimate goal of increasing the quality and utility of swaps data. The proposal was expected in May 2019.

Cross-Border Application of the Registration Thresholds and Certain Business Conduct Standards Applicable to Swap Dealers and Major Swap Participants - The CFTC intends to publish for public comment proposed rules and interpretations addressing the cross-border application of certain swap provisions of the Commodity Exchange Act (CEA). The proposal is expected in June 2019.

CFTC's Expected Final Rules

Definitions and Clearing Requirement - The CFTC proposed amending subpart A of part 50 of its regulations. The proposal would amend the scope of market participants eligible to elect an exception or exemption from the Commission's swap clearing requirement under section 2(h) of the CEA. The final rule is expected in June 2019.

Position Limits for Commodity Derivatives Contracts – The CFTC is considering allowing designated contract markets (DCMs) and swap execution facilities (SEFs) to process requests for exemptions from position limits for: (i) *bona fide* hedges not enumerated under the definition for *bona fide* hedging position proposed in December 2013; and (ii) anticipatory *bona fide* hedging positions. ICI commented on the first proposal in March 2011.[\[27\]](#) A final rule is expected by July 2019.

Amendment to CFTC Regulation 3.10(c): Exemption From Registration for Certain Foreign Persons –The CFTC proposed amendments to 3.10(c)(2) and (3) that would revise the conditions under which persons located outside the United States acting in the capacity of an FCM, an introducing broker, CTA, or CPO in connection with commodity interest transactions solely on behalf of persons located outside the US, or on behalf of certain international financial institutions, would qualify for an exemption from registration with the CFTC. The final rule is expected in June 2019.

Segregation of Assets Held as Collateral in Uncleared Swap Transaction, Amendments – The CFTC proposed amendments to certain regulations for swap dealers governing notification of counterparties of their right to segregate initial margin for uncleared swaps and the handling of segregated initial margin. The final rule is expected in June 2019.

Capital Requirements for Swap Dealers and Major Swap Participants – The CFTC proposed rules that will impose capital requirements for swap dealers and major swap participants that are not banks, as required by section 731 of the Dodd-Frank Act. ICI filed a comment letter in March 2019.[\[28\]](#) The final rule is expected by December 2019.

Treasury Department

Treasury Department's Expected Final Rule

Proposed Revisions to Prohibitions and Restrictions on Proprietary Trading and Certain Interests in, and Relationships With, Hedge Funds and Private Equity Funds(aka Volcker Rule)– Treasury (via the Office of the Comptroller of the Currency), Board, and FDIC have proposed amendments that are intended to provide banking entities with clarity about what activities are prohibited and to improve supervision and implementation of section 13 of the Bank Holding Company Act. The final rule is expected by December 2019.

Federal Reserve Board

Board's Recently Proposed Rule

Proposed Rule on Control and Divestiture Proceedings – The Board invited public comment on a proposal that would revise the Board's regulations related to determinations of whether a company has the ability to exercise a controlling influence over another company for purposes of the Bank Holding Company Act or the Home Owners' Loan Act. The proposal was issued on May 14, 2019, and the comment period ends on July 15, 2019.

endnotes

- [1] The complete SEC Spring 2019 Agenda is *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235.
- [2] The complete CFTC Spring 2019 Agenda is *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3038.
- [3] The complete Treasury Department Spring 2019 Agenda is *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=1500.
- [4] The complete Board Spring 2019 Agenda is *available at* https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=7100.
- [5] See e.g., Governance and Transparency at the Commission and in Our Markets, Chairman Jay Clayton, Remarks at the PLI 49th Annual Institute on Securities Regulation - New York, N.Y., Nov. 8, 2017, which is *available at* <https://www.sec.gov/news/speech/speech-clayton-2017-11-08>.
- [6] SEC Final Rules are *available at* <https://www.sec.gov/rules/final.shtml>.
- [7] SEC Proposed Rules are *available at* <https://www.sec.gov/rules/proposed.shtml>.
- [8] CFTC Proposed Rules are *available at* <https://comments.cftc.gov/FederalRegister/Proposed.aspx>.
- [9] The comment letter is *available at* <https://www.sec.gov/comments/ia-bd-conduct-standards/cll4-2188873-160255.pdf>.
- [10] The comment letter is *available at* <https://www.sec.gov/comments/ia-bd-conduct-standards/cll4-2997611-161894.pdf>.
- [11] The comment letter is *available at* <https://www.sec.gov/comments/s7-07-18/s70718-4184208-172550.pdf>.
- [12] See ICI Memorandum No. 31815 (June 19, 2019), *available at* https://www.ici.org/my_ici/memorandum/ci.memo31815.idc.
- [13] The comment letter is *available at* <https://www.sec.gov/comments/s7-10-18/s71018-4018268-167326.pdf>.
- [14] The comment letter is *available at* <https://www.sec.gov/comments/s7-08-12/s70812-4660298-176512.pdf>.
- [15] The comment letter is *available at* <https://www.sec.gov/comments/s7-27-18/s72718-5433908-184637.pdf>.
- [16] The comment letter is *available at*

<https://www.sec.gov/comments/s7-03-19/s70319-5650770-185712.pdf>.

[17] The comment letter is *available at* <https://www.sec.gov/comments/s7-24-15/s72415-114.pdf>.

[18] The comment letter is *available at* <https://www.sec.gov/comments/s7-24-15/s72415-244.pdf>.

[19] The comment letter is *available at* <https://www.sec.gov/comments/s7-24-15/s72415-255.pdf>.

[20] The comment letter is *available at* <https://www.sec.gov/comments/s7-27-15/s72715-17.pdf>.

[21] The comment letter is *available at* <https://www.sec.gov/comments/s7-01-19/s70119-5423834-184598.pdf>.

[22] The comment letter is *available at* <https://www.sec.gov/comments/s7-15-18/s71518-4403410-175592.pdf>.

[23] The comment letter is *available at* <https://www.sec.gov/comments/s7-23-18/s72318-4940428-178488.pdf>.

[24] The comment letter is *available at* <https://www.ici.org/pdf/30882a.pdf>.

[25] The comment letter is *available at* <https://www.ici.org/pdf/31448a.pdf>.

[26] The comment letter is *available at* <https://www.ici.org/pdf/31584a.pdf>.

[27] The comment letter is *available at* https://www.ici.org/pdf/11_pos_limit.pdf.

[28] The comment letter is *available at* <https://www.ici.org/pdf/30653a.pdf>.