

**MEMO# 33592**

June 16, 2021

## **SEC and CFTC Rulemaking Agendas**

[33592]

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TO: ICI Members  
ESG Advisory Group  
ESG Task Force SUBJECTS: Abandoned Property and Escheatment  
Compliance  
Disclosure  
Fund Accounting & Financial Reporting  
Fund Governance  
Operations  
Transfer Agency RE: SEC and CFTC Rulemaking Agendas

The Office of Information and Regulatory Affairs released the Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions on June 11. The agenda includes regulatory actions that the Securities and Exchange Commission and Commodity Futures Trading Commission expect to take between now and April 2022.[\[1\]](#) Elements of the SEC's and CFTC's agendas that would affect investment companies or investment advisers are summarized below, accompanied by the name(s) of the ICI staff member(s) to contact for further information.

SEC Chair Gensler's first agenda is quite voluminous, with eight rule proposals and three final rules expected by October 2021 and another seven rule proposals expected by November 2021. The SEC expects to issue another fourteen rule proposals and three final rules by April 2022. Acting Chair Rostin Behnam's agenda is more streamlined, with five proposals expected by the end of 2021 and one proposal expected by April 2022.

### **Securities and Exchange Commission**

#### ***Rule Proposals Expected by October 2021***

**Gamification.** The Division of Trading & Markets is considering recommending that the Commission seek public comment on potential rules related to gamification, behavioral prompts, predictive analytics, and differential marketing. (Sarah Bessin)

**Corporate Board Diversity.** The Division of Corporation Finance is considering recommending that the Commission propose rule amendments to enhance registrant disclosures about the diversity of board members and nominees. (Bridget Farrell)

Climate Change Disclosure. The Division of Corporation Finance is considering recommending that the Commission propose rule amendments to enhance registrant disclosures regarding issuers' climate-related risks and opportunities. (Dorothy Donohue)

Human Capital Management Disclosure. The Division of Corporation Finance is considering recommending that the Commission propose rule amendments to enhance registrant disclosures regarding human capital management. (Dorothy Donohue)

Transfer Agents. The Division of Trading and Markets is considering recommending that the Commission propose updates and refinements to the current transfer agent regulatory regime to update the existing regulatory framework. (Bridget Farrell/Joanne Kane)

Amendments to the Securities Transaction Settlement Cycle. The Division of Trading and Markets is considering recommending that the Commission propose rules to amend Exchange Act Rule 15c6-1(a) to shorten the standard settlement cycle. (Marty Burns/Nhan Nguyen)

Cybersecurity Risk Governance. The Division of Trading and Markets is considering recommending that the Commission propose rule amendments to enhance issuer disclosure regarding cybersecurity risk governance. (Peter Salmon/Nhan Nguyen)

Rule 10b5-1. The Division of Corporation Finance is considering recommending that the Commission propose rule amendments to address concerns about the use of the affirmative defense provisions of Exchange Act Rule 10b5-1. (Ken Fang)

### ***Final Rules and Rule Amendments Expected by October 2021***

Filing Fee Disclosure and Payment Methods Modernization. The Division of Corporation Finance is considering recommending that the Commission adopt amendments that would modernize filing fee disclosure and payment methods by requiring fee calculation information to be provided in a structured format, and by updating the fee payment options. The amendments are intended to improve filing fee preparation and payment processing by facilitating both enhanced validation through fee structuring and lower-cost, easily routable payments. (Greg Smith)

Regulation ATS for ATSs That Trade U.S. Government Securities. The Division of Trading and Markets is considering recommending that the Commission adopt amendments to Regulation ATS designed to increase operational transparency and foster oversight of ATSs that transact in government securities, as well as require the electronic filing of Forms ATS and ATS-R. (Nhan Nguyen)

Amendments to NMS Plan for the Consolidated Audit Trail-Data Security. The Division of Trading and Markets is considering recommending that the Commission adopt amendments to the National Market System Plan Governing the Consolidated Audit Trail regarding data security. (Nhan Nguyen)

### ***Rule Proposals Expected by November 2021***

Third Party Service Providers. The Division of Investment Management is considering recommending that the Commission seek public comment on the role of certain third-party service providers, such as index providers and model providers, and the implications for asset management industry.[\[2\]](#) (Matt Thornton/Greg Smith)

Reporting of Proxy Votes on Executive Compensation and Other Matters. The Division of Investment Management is considering recommending that the Commission repropose rule amendments to implement section 951 of the Dodd-Frank Act and to enhance the information reported on Form N-PX. The Commission previously proposed amendments to rules and Form N-PX that would require institutional investment managers subject to section 13(f) of the Exchange Act to report how they voted on any shareholder vote on executive compensation or golden parachutes pursuant to sections 14A(a) and (b) of the Exchange Act. [\[3\]](#) (Sarah Bessin/Greg Smith)

Listing Standards for Recovery of Erroneously Awarded Compensation. The Division of Corporation Finance is considering recommending that the Commission re-propose rules to implement section 954 of the Dodd-Frank Act, which requires the Commission to adopt rules to direct national securities exchanges to prohibit the listing of securities of issuers that have not developed and implemented a policy providing for disclosure of the issuer's policy on incentive-based compensation and mandating the clawback of such compensation in certain circumstances. (Matt Thornton)

Rule 14a-8 Amendments. The Division of Corporation Finance is considering recommending that the Commission propose rule amendments regarding shareholder proposals under Rule 14a-8. (Matt Thornton)

Proxy Voting Advice. The Division of Corporation Finance is considering recommending that the Commission propose rule amendments governing proxy voting advice. (Matt Thornton)

Electronic Submission of Applications for Orders Under the Advisers Act, Confidential Treatment Requests for Filings on Form 13F, and ADV-NR. The Division of Investment Management is considering recommending that the Commission propose amendments to rules and forms to require that the following types of filings be submitted electronically: (1) applications for orders under any section of the Investment Advisers Act of 1940, (2) confidential treatment requests for filings made under section 13(f) of the Securities Exchange Act of 1934, and (3) ADV-NR. (Bridget Farrell/Sarah Bessin/Greg Smith)

Short Sale Disclosure Reforms. The Division of Trading and Markets is considering recommending that the Commission propose rules to implement section 929X(a) of the Dodd-Frank Act. Section 929X(a) amended section 13(f) of the Exchange Act to require the Commission to adopt rules requiring monthly (or potentially more frequent) public short sale disclosures by security, including the aggregate amount of the number of short sales of each security. (Sarah Bessin and Nhan Nguyen)

### ***Proposals Expected by April 2022***

Exempt Offerings. The Division of Corporation Finance is considering recommending that the Commission seek public comment on ways to further update the Commission's rules related to exempt offerings to more effectively promote investor protection, including updating the financial thresholds in the accredited investor definition, ensuring appropriate access to and enhancing the information available regarding Regulation D offerings, and amendments related to the integration framework for registered and exempt offerings. (Bridget Farrell)

Disclosure Regarding Beneficial Ownership and Swaps. The Division of Corporation Finance is considering recommending that the Commission propose amendments to enhance market transparency, including disclosure related to beneficial ownership or interests in

security-based swaps. (Nhan Nguyen and Sarah Bessin)

Amendments to the Custody Rules for Investment Advisers. The Division of Investment Management is considering recommending that the Commission propose amendments to existing rules and/or propose new rules under the Investment Advisers Act of 1940 to improve and modernize the regulations around the custody of funds or investments of clients by investment advisers. (Ken Fang)

Amendments to Rule 17a-7 Under the Investment Company Act. The Division of Investment Management is considering recommending that the Commission propose amendments to rule 17a-7 under the Investment Company Act of 1940 concerning the exemption of certain purchase or sale transactions between an investment company and certain affiliated persons. (Matt Thornton)

Money Market Fund Reforms. The Division of Investment Management is considering recommending reforms relating to the regulation of money market funds. (Jane Heinrichs)

ESG Rules for Investment Companies and Investment Advisers. The Division of Investment Management is considering recommending that the Commission propose requirements for investment companies and investment advisers related to ESG factors, including ESG claims and related disclosures. (Annette Capretta)

Open-End Fund Liquidity and Dilution Management. The Division of Investment Management is considering recommending that the Commission propose changes to regulatory requirements relating to open-end funds' liquidity and dilution management. (Matt Thornton/Marty Burns)

Registration and Regulation of Security-Based Swap Execution Facilities. In May 2013, the Commission proposed rules for the registration and regulation of security-based swap execution facilities ("SB SEFs"). These rules would, among other things, implement 14 statutory core principles for SB SEFs set forth in the Dodd-Frank Act. The Commission separately proposed Regulation MC to address conflicts of interest in SB SEFs and other registered entities. (Nhan Nguyen)

Prohibition Against Conflicts of Interest Relating to Certain Securitizations. The Division of Trading and Markets is considering recommending that the Commission repropose a rule under the Securities Act to implement the prohibition under section 621 of the Dodd-Frank Act on material conflicts of interest in connection with certain securitizations. (Sarah Bessin)

Incentive-Based Compensation Arrangements. The Division of Trading and Markets is considering recommending that the Commission, together with the Board of Governors of the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Housing Finance Agency and the National Credit Union Administration repropose regulations and guidelines with respect to incentive-based compensation practices at certain financial institutions that have \$1 billion or more in total assets as required by the Dodd- Frank Act. (Bridget Farrell)

Market Structure Modernization. The Division of Trading and Markets is considering recommending that the Commission propose rule amendments to modernize rules related to equity market structure such as payment for order flow, best execution (amendments to rule 605), market concentration, and certain other practices. (Nhan Nguyen)

Portfolio Margining of Uncleared Swaps and Non-Cleared Security Based Swaps. The Commission, jointly with the Commodity Futures Trading Commission (CFTC), sought public comment on ways to harmonize the Commission's rules with CFTC rules with respect to portfolio margining of uncleared swaps with non-cleared security-based swaps, to consider further efficiencies in cleared swaps and security-based swaps portfolio margining, and to explore expanding portfolio margining to futures and cash equity positions. The Division of Trading and Markets is considering recommending that the Commission, jointly with the CFTC, propose portfolio margin-related amendments to the existing regulatory framework for swaps and security-based swaps. (Sarah Bessin)

Trading Prohibitions Under the Holding Foreign Companies Accountable Act and Enhanced Listing Standards. The Division of Trading and Markets is considering recommending rule amendments that would have the Commission implement and remove trading prohibitions, as required by the Holding Foreign Companies Accountable Act, for the securities of an issuer that files a report with financials statement audited by a registered public accounting firm located in a foreign jurisdiction that the Public Company Accounting Oversight Board ("PCAOB") is unable to inspect or investigate completely because of a position taken by an authority in the foreign jurisdiction. In conjunction, the Division of Trading and Markets is also considering recommending rule amendments to enhance listing standards of U.S. national securities exchanges to prohibit the initial and continued listing of issuers that are subject to such trading prohibitions. (Ken Fang/Greg Smith)

Loan or Borrowing of Securities. The Division of Trading and Markets is considering recommending that the Commission propose rules to further implement section 984(b) of the Dodd-Frank Act, which amended the Exchange Act to require the SEC to engage in rulemaking within 2 years to "increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities." (Sarah Bessin)

### ***Final Rules Expected by April 2022***

Pay Versus Performance. The Division of Corporation Finance is considering recommending that the Commission adopt rules to implement section 953(a) of the Dodd-Frank Act, which added section 14(i) to the Exchange Act to require issuers to disclose information that shows the relationship between executive compensation actually paid and the financial performance of the issuer. (Eva Mykolenko)

Universal Proxy. The Division of Corporation Finance is considering recommending that the Commission adopt amendments to the proxy rules to allow a shareholder voting by proxy to choose among all duly nominated candidates in a contested election of directors. The comment period was reopened in May 2021 and ICI commented on June 7. (Ken Fang/Matt Thornton)

Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and ETFs; Fee Information in Investment Company Ads. The Division of Investment Management is considering recommending that the Commission adopt a new streamlined shareholder report under the Investment Company Act of 1940. The Division is also considering recommending that the Commission adopt rule and form amendments to improve and modernize certain aspects of the current disclosure framework under the Investment Company Act. ICI commented on the August 2020 proposal. (Ken Fang/Matt Thornton/Greg Smith)

## **Commodity Futures Trading Commission**

### ***Proposals Expected between June and November 2021***

Filing, Reporting, and Public Information Requirements for Derivatives Clearing Organizations. The Division of Clearing and Risk is considering recommending that the CFTC propose amendments to certain reporting and filing requirements for derivatives clearing organizations. (The agenda indicates that the proposal was expected in May 2021, but it has not yet been issued.) (Nhan Nguyen).

Amendments to the Made Available to Trade Process. The Division of Market Oversight is considering recommending that the CFTC propose amendments to the Made Available to Trade (MAT) process to determine swaps that have made available to trade and therefore subject to the trade execution requirement. (The agenda indicates that the proposal is expected in June 2021, but it has not yet been issued.) (Sarah Bessin/Nhan Nguyen)

Protection of Digital Asset Customer Collateral and Cleared Digital Asset Swaps Customer Collateral-Conforming Amendments to the Commodity Broker Bankruptcy Provisions and Other Commission Regulations. The CFTC expects to propose by September 2021 separate segregation regimes for futures commission merchants and derivatives clearing organizations for: (1) customers trading futures contracts and options on futures contracts on digital assets that provide for physical delivery; and (2) customers clearing swaps that provide for the physical delivery of digital assets. The Commission further expects to propose to revise its bankruptcy regulations to establish new account classes to reflect the separate segregation regimes for digital asset futures contracts and digital asset swaps that provide for physical delivery. (Sarah Bessin)

Reducing Regulatory Burden: Retrospective Review Under E.O. 13563. In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review, the CFTC intends to continue its review of existing regulations to evaluate their continued effectiveness in achieving the objectives for which they were adopted. In this regard, the Commission expects by November 2021 to identify these regulations and to provide interested persons an opportunity to submit their views with respect to such regulations. (Sarah Bessin/Nhan Nguyen/Rachel Graham)

Core Principle 9 for Designated Contract Markets. The Division of Market Oversight is considering recommending by December 2021 that the CFTC propose new rules concerning all aspects of centralized market trading on designated contract markets, including the amount of block trading in futures and options, and exchange of derivatives for related position transactions. (Nhan Nguyen/Sarah Bessin)

### ***Proposal Expected by April 2022***

Portfolio Margining of Uncleared Swaps and Non-Cleared Security-Based Swaps. The CFTC and SEC issued a joint request for comment on potential ways to implement portfolio margining of uncleared swaps and non-cleared security-based swaps in accounts carried by broker-dealers, security-based swap dealers, swap dealers, and futures commission merchants. The Market Participants Division is considering recommending that the CFTC, jointly with the SEC, propose portfolio margin-related amendments to the existing regulatory framework for swaps and security-based swaps. (Sarah Bessin)

Dorothy M. Donohue  
Deputy General Counsel - Securities Regulation

Sarah A. Bessin  
Associate General Counsel

#### endnotes

[1] The SEC's regulatory agenda can be accessed through the SEC's website at <https://www.sec.gov/news/press-release/2021-99>. Commissioners Peirce and Roisman commented on the agenda in a joint public statement, *Moving Forward or Falling Back*, available at <https://www.sec.gov/news/public-statement/moving-forward-or-falling-back-statement-chair-genslers-regulatory-agenda>. The CFTC's regulatory agenda is available at [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3038&csrf\\_token=A5067DE99EE7C9F662401A36E1B1447785AA9F23C0D8457E0A070CF5854603E940657809E710EECAD3E8BA8C7494F1F7759A](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3038&csrf_token=A5067DE99EE7C9F662401A36E1B1447785AA9F23C0D8457E0A070CF5854603E940657809E710EECAD3E8BA8C7494F1F7759A).

[2] We expect that this would be a concept release or request for comment, given that it is described as the Division considering recommending that the Commission "seek public comment" rather than the Division considering recommending that the Commission "propose rules or rule amendments."

[3] The Commission proposed in 2010, but never adopted, the Dodd-Frank-mandated "say on pay" rulemaking.