

**MEMO# 33957**

December 15, 2021

## **SEC and CFTC Rulemaking Agendas**

[33957]

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TO: ICI Members  
Investment Company Directors  
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 Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions on December 13, 2021. The agenda includes regulatory actions that the SEC and CFTC expect to take between now and October 2022.[\[1\]](#) Elements of the SEC's and CFTC's agendas that would affect investment companies or investment advisers are summarized below, indicating the ICI staff member(s) to contact for further information.

SEC Chair Gensler's agenda is quite voluminous with five proposals expected soon,[\[2\]](#) eighteen proposals and one final rule expected by April 2022, and another four rule proposals and one final rule expected by October 2022. Of note, proposed amendments to the cross-trading rule (Investment Company Act Rule 17a-7) are no longer on the agenda, and the agenda does not include a proposal to prevent Securities Exchange Act Rule 15c2-11 from being applied to fixed-income securities.[\[3\]](#) Commissioners Peirce and Roisman issued a joint statement, objecting to these and other aspects of the agenda.[\[4\]](#) The agenda indicates that modernizing the Investment Advisers Act custody rules is a lower priority.[\[5\]](#)

CFTC Acting Chair Rostin Behnam's agenda is more streamlined, with seven proposals expected between now and September 2022.[\[6\]](#)

### **Securities and Exchange Commission**

#### **I. Rule Proposals Expected by December 2021[\[7\]](#)**

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. (Bridget Farrell)

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/Nhan Nguyen)

Prohibition Against Fraud, Manipulation, and Deception in Connection With Security-Based Swaps and Disclosure of Security-Based Swap Positions. On December 15, the SEC will consider whether to re-propose a rule prohibiting fraud, manipulation, or deception in connection with security-based swaps, as well as whether to propose new rules prohibiting undue influence over the Chief Compliance Officers of security-based swap dealers and major security-based swap participants and requiring reporting of large security-based swap positions. (Nhan Nguyen/ Sarah Bessin)

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, as incorporated in section 27B of the Securities Act, on material conflicts of interest in connection with certain securitizations. (Sarah Bessin)

## **II. Rule Proposals Expected by April 2022**

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.[\[8\]](#) (Matt Thornton)

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)

Rules Related to Investment Companies and Investment Advisers to Address Matters Relating to Environmental, Social and Governance Factors. 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)

Cybersecurity Risk Governance. The Division of Corporation Finance is considering recommending that the Commission propose rule amendments to enhance issuer disclosures regarding cybersecurity risk governance. (Peter Salmon/Marty Burns/Nhan Nguyen)

Cybersecurity Risk Governance. The Division of Investment Management is considering recommending that the Commission propose rules to enhance fund and investment adviser

disclosures and governance relating to cybersecurity risks. (Peter Salmon/Marty Burns/Nhan Nguyen)

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)

Amendments to the Fund Names Rule. The Division of Investment Management is considering recommending that the Commission propose amendments to rule 35d-1, the fund names rule. (Annette Capretta)>

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)

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. (Joanne Kane/Nhan Nguyen)

Equity Market Structure Modernization. The Division of Trading & Markets is considering recommending that the Commission propose rule amendments to modernize rules related to equity market structure such as those relating to order routing, conflicts of interest, best execution, market concentration, and the disclosure of best execution statistics. (Nhan Nguyen)

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 and options. (Nhan Nguyen/Sarah Bessin)

Regulation ATS for ATSs That Trade U.S. Government Securities. The Division of Trading and Markets is considering recommending that the Commission repropose 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 a modernized version of Form ATS. The Division is also considering amending Rule 3b-16 to include trading venues that display quotes and other trading interest. (Nhan Nguyen/Matt Thornton)

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, amendments to Rule 701, and amendments related to the integration framework for registered and exempt offerings. (Bridget Farrell)

Pay Versus Performance. The Division of Corporation Finance is considering recommending that the Commission re-open the comment period on 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.[\[9\]](#) (Eva Mykolenko)

Update to Rules Related to Private Fund Advisers. The Division of Investment Management is considering recommending that the Commission propose rules under the Advisers Act to address lack of transparency, conflicts of interest, and certain other matters involving private fund advisers. (Bridget Farrell)

Special Purpose Acquisition Companies. The Division of Corporation Finance is considering recommending that the Commission propose rule amendments related to special purpose acquisition companies. (Matt Thornton)

Registration and Regulation of Security-Based Swap Execution Facilities. The Division of Trading and Markets is considering recommending that the Commission repropose rules for the registration and regulation of security-based swap execution facilities (SB SEFs). These rules would, among other things, implement statutory core principles for SB SEFs set forth in the Dodd-Frank Act and address conflicts of interest in SB SEFs (as mandated by section 765 of the Dodd-Frank Act) from RIN 3235-AK74 into this rulemaking. (Nhan Nguyen)

Conflicts of Interest for Clearing Agencies of Security-Based Swaps. The Division of Trading and Markets is considering recommending that the Commission re-propose regulations to require governance arrangements for security-based swap clearing agencies to mitigate potential conflicts of interest that could exist for those entities. (Nhan Nguyen/Sarah Bessin)

Expanding Clearing of Government Securities. The Division of Trading and Markets is considering recommending that the Commission propose requirements for registered clearing agencies for government securities regarding the clearance of certain trades and repo transactions involving government securities. (Nhan Nguyen/Matt Thornton)

### **III. Proposed Rules Expected by October 2022**

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)

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)

Regulation D and Form D Improvements. The Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D and Form D to improve protection for investors. (Bridget Farrell)

Trading Prohibitions Under the Holding Foreign Companies Accountable Act and Enhanced Listing Standards. The Division of Trading and Markets is considering recommending rule amendments to enhance listing standards of US national securities exchanges to prohibit the initial and continued listing of issuers that are subject to such trading prohibitions. (Eva

Mykolenko)

#### **IV. Final Rule Expected by October 2022**

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. 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)

### **CFTC**

#### **I. Proposals Expected between November 2021 and September 2022**

Governance Requirements for Derivatives Clearing Organizations. The CFTC expects to propose amendments to certain governance requirements under part 39 of its regulations applicable to derivatives clearing organizations. (The agenda indicates that the proposal was expected in December 2021, but it has not yet been issued.) (Sarah Bessin/Nhan Nguyen)

Recovery and Wind-down Plans for Systemically Important Derivative Clearing Organizations and Subpart C Derivatives Clearing Organizations. The CFTC expects to propose amendments to the recovery and wind-down plan requirements applicable to systemically important derivatives clearing organizations and subpart C derivatives clearing organizations that would codify the staff guidance set forth in CFTC Staff Letter No. 16-61. (The agenda indicates that the proposal is expected in December 2021, but it has not yet been issued.) (Sarah Bessin/Nhan Nguyen)

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 November 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 December 2021, but it has not yet been issued.) (Sarah Bessin/Nhan Nguyen)

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 by April 2022. (Sarah Bessin)

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 June 2022 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 September 2022 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)

Dorothy M. Donohue  
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#### endnotes

[1] The SEC's short-term regulatory agenda can be accessed through the SEC's website at [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf\\_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F64B67159C3A36E7556BD0FB872C8F](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=7CE97CC2D49C9B6B70868F7B2752E582C86F1945A4A46F34426C18AF1ABE101E611318F64B67159C3A36E7556BD0FB872C8F) 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=E0AB193DCEE8592DF5ED68FCF448C2AC387F3C75EB76812C4F4AABE3223331F770B9093333F6E7038601D2CC13CF7097D87](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3038&csrf_token=E0AB193DCEE8592DF5ED68FCF448C2AC387F3C75EB76812C4F4AABE3223331F770B9093333F6E7038601D2CC13CF7097D87)

[2] The agenda indicates that the proposals are expected in December 2021, but they have not yet been issued.

[3] The long-term agenda indicates, among other things, that the Division of Investment Management and the Division of Trading and Markets are considering recommending that the Commission propose rules related to investment advisers' and broker-dealers' digital engagement practices; and the Division of Trading and Markets is considering recommending that the Commission propose amendments to modernize rules related to fixed income market structure. The long-term agenda is available at [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPubId=202110&showStage=longterm&agencyCd=3235&csrf\\_token=1A8AFCE4F3F884D855A363DCA9313A0A505](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPubId=202110&showStage=longterm&agencyCd=3235&csrf_token=1A8AFCE4F3F884D855A363DCA9313A0A505)

[4] Commissioners Peirce and Roisman issued a joint public statement, *Falling Further Back*

is available at

<https://www.sec.gov/news/statement/peirce-roisman-falling-further-back-121321>.

[5] The Spring Agenda indicated that the Commission was anticipating issuing a proposal in April 2022, but the Fall Agenda describes that rulemaking as a long-term action, with the date for action undetermined.

[6] The CFTC currently has two members: Acting Chair Benham (D) and Commissioner Dawn Stump (R).

[7] The agenda indicates that the proposals are expected in December 2021, but they have not yet been issued.

[8] We expect that this would be a concept release or request for comment, given that it is listed in the Prerule Stage and 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."

[9] The Spring Agenda indicated that the staff was considering recommending that the Commission adopt rules to implement section 953(a) of the Dodd-Frank Act.