

MEMO# 34191

June 23, 2022

SEC Rulemaking Agenda

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TO: ICI Members
Investment Company Directors
Disclosure Working Group
ESG Advisory Group
ESG Fund Disclosure Working Group
ESG Public Company Disclosure Working Group
ESG Task Force
SEC Rules Committee SUBJECTS: Abandoned Property and Escheatment
Compliance
Disclosure
Fund Accounting & Financial Reporting
Fund Governance
Operations
Transfer Agency RE: SEC Rulemaking Agenda

The Office of Information and Regulatory Affairs released the Spring 2022 Unified Agenda of Regulatory and Deregulatory Actions on June 21, 2022. The agenda includes regulatory actions that the SEC plans to take between now and April 2023.[\[1\]](#) Elements of the SEC's agenda that would affect investment companies or investment advisers are summarized below.

SEC Chair Gensler's agenda is quite voluminous with fourteen proposals and ten final rules expected by October 2022 and another three proposals and five final rules expected by April 2023. Commissioner Peirce issued a statement noting that the pace and character of the rulemakings on this agenda make for dangerous conditions in our capital markets.[\[2\]](#)

Rule Proposals Expected by October 2022

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.

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.

Amendments to 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 to improve and modernize the regulations around the custody of funds or investments of clients by investment advisers.

Third Party Service Providers. The Division of Investment Management is considering recommending that the Commission propose rules related to the role of certain third-party service providers and the implications for the asset management industry.[\[3\]](#)

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.

Fund Fee Disclosure and Reform. The Division of Investment Management is considering recommending that the Commission propose changes to regulatory requirements relating to registered investment companies' fees and fee disclosure

Amendments to Form PF. The Division of Investment Management is considering recommending that the Commission adopt further amendments to Form PF for large liquidity fund advisers.

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.

Equity 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 competition and structure such as those relating to order routing, conflicts of interest, best execution, market concentration, pricing increments, transaction fees, core market data, and disclosure of order execution quality statistics.

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.

Cybersecurity. The Division of Trading & Markets is considering recommending that the Commission propose rules to address cybersecurity risk and related disclosures, amendments to Regulation S-P and Regulation SCI, and other enhancements related to the cybersecurity and resiliency of certain Commission registrants.

Regulation ATS Modernization. The Division of Trading & Markets is considering recommending that the Commission propose amendments to Regulation ATS to modernize the conditions to the ATS exemption for all ATSs. This includes considering recommending that the Commission propose requirements to promote pre-trade price transparency across asset classes.

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.

Narrowing Exemptions for Certain Exchange Members. The Division of Trading & Markets is considering recommending that the Commission propose amendments to Rule 15b9-1 to narrow the availability of the FINRA membership exemption for broker-dealer exchange members that trade proprietarily elsewhere than on an exchange of which they are a member.

Rule Proposals Expected by April 2023

Exchange Traded Products. The Commission sought public input to evaluate the listing and trading of ETPs in the marketplace, assess the risks posed by ETPs with certain characteristics, and explore areas of focus in reviewing exchange proposals to list and trade new ETPs for consistency with the Exchange Act. The Division of Trading & Markets is considering appropriate next steps with respect to these issues.

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.

Final Rules Expected by October 2022

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

Share Repurchase Disclosure Modernization. The Division of Corporation Finance is considering recommending that the Commission adopt rule amendments to modernize and improve disclosure about issuers' repurchases of their equity securities including providing more timely disclosure on new Form SR for purchases of equity securities for each day that it, or an affiliated purchaser, makes a share repurchase.

Enhanced Reporting of Fund Proxy Votes. The Division of Investment Management is considering recommending that the Commission adopt rule amendments to enhance the information reported on Form N-PX.

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.

Money Market Fund Reform. The Division of Investment Management is considering recommending that the Commission adopt reforms related to money market funds, including requiring certain money market funds to implement swing pricing and to address how stable value funds should handle a negative interest rate environment.

Regulation ATS Amendments. The Division of Trading & Markets is considering recommending that the Commission adopt proposed amendments to: (i) Exchange Act Rule 3b-16 to include systems that offer the use of non-firm trading interest and communication protocols to bring together buyers and sellers of securities; and (ii) Regulation ATS and Regulation SCI for ATSs that trade US government securities, NMS stock, and other types of securities and to require the electronic filing of a modernized version of Form ATS and Form ATS-R.

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.

Securities Transactions Settlement Cycle (T+1). The Division of Trading and Markets is considering recommending that the Commission adopt rules to shorten the standard settlement cycle.

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.

Prohibition Against Fraud, Manipulation, and Deception in Connection With Security-Based Swaps and Disclosure of Security-Based Swap Positions. The Division of Trading & Markets will consider recommending that the Commission adopt a rule to prevent fraud, manipulation, and deception in connection with security-based swaps, rules to prohibit undue influence over the Chief Compliance Officers of security-based swap dealers and major security-based swap participants, and rules requiring certain disclosures in connection with security-based swap positions.

Final Rules Expected by April 2023

Cybersecurity Risk Governance. The Division of Investment Management is considering recommending that the Commission adopt rules to enhance fund and investment adviser disclosures and governance relating to cybersecurity risks.

Modernization of Beneficial Ownership. The Division of Corporation Finance is considering recommending that the Commission adopt rule amendments to modernize beneficial reporting obligations, including accelerating the filing deadlines for Schedule 13D and 13G reports.

Securities Lending and Borrowing. The Division of Trading and Markets is considering recommending that the Commission adopt rules to further implement section 984(b) of the Dodd-Frank Act. The proposed rule would require any person that loans a security to report the material terms of those securities lending transactions to a national securities association ("RNSA"). The proposed rule would require the RNSA to make available to the public certain information regarding each transaction and aggregate information on securities on loan and available to loan.

Further Definition of Dealer. The Division of Trading and Markets is considering recommending that the Commission adopt amendments to address the definition of dealer.

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

endnotes

[1] The SEC's short-term regulatory agenda can be accessed at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RUL

[E_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=65AAE33835B8BBD452D76CD2D58A29488FDAF9752235E0949FFE21DC0BC4AEC773CD50440217BA4FE7FE4449A7FE6E169496](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=65AAE33835B8BBD452D76CD2D58A29488FDAF9752235E0949FFE21DC0BC4AEC773CD50440217BA4FE7FE4449A7FE6E169496).

A proposal updating and refining the current transfer agent regulatory regime was moved from the short-term to the long-term agenda with no date for expected next action provided. Proposed amendments to the cross-trading rule (Investment Company Act Rule 17a-7) were not on the Fall 2021 agenda and are not on this agenda either. The SEC's long-term regulatory agenda can be accessed at

https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPubId=202204&showStage=longterm&agencyCd=3235&csrf_token=65AAE33835B8BBD452D76CD2D58A29488FDAF9752235E0949FFE21DC0BC4AEC773CD50440217BA4FE7FE4449A7FE6E169496.

[2] See Commissioner Peirce, RIP Current Rulemakings: Statement on the Current Regulatory Flexibility Agenda, available at

<https://www.sec.gov/news/statement/peirce-statement-regulatory-flexibility-agenda-062222>.

[3] We are evaluating and will be responding to a related RFI in the near future.