

MEMO# 34203

June 28, 2022

CFTC Spring 2022 Rulemaking Agenda

[34203]

June 28, 2022

TO: ICI Members

Investment Company Directors

Derivatives Markets Advisory Committee SUBJECTS: Alternative Investments

Compliance

CPO/CTA

Derivatives

Disclosure

Investment Advisers

Operations

Trading and Markets RE: CFTC Spring 2022 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 CFTC plans to take between now and March 2023.[\[1\]](#) CFTC Chair Behnam's agenda is ambitious with nine proposals expected between now and March 2023 that potentially would affect investment companies or investment advisers. Those proposals are summarized below.[\[2\]](#)

Rule Proposals Expected by June 2022[\[3\]](#)

Governance Requirements for Derivatives Clearing Organizations. The CFTC is proposing amendments to certain governance requirements under part 39 of its regulations applicable to derivatives clearing organizations. (Nhan Nguyen/Sarah Bessin)

Recovery and Wind-down Plans for Systemically Important Derivative Clearing Organizations and Subpart C Derivatives Clearing Organizations; Information Necessary for Resolution Planning. The CFTC is proposing 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, and clarifying the information required from systemically important derivatives clearing organizations necessary for resolution planning. (Nhan Nguyen/Sarah Bessin)

Treatment of Separate Accounts by Futures Commission Merchants. The CFTC is proposing a rule to codify no-action relief granted to derivatives clearing organizations with respect to the treatment by clearing member futures commission merchants of margin requirements

for separate accounts of certain beneficial owners. (Sarah Bessin/Nhan Nguyen)

Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants. The CFTC expects to propose amendments to the regulations governing uncleared swaps for swap dealers and major swap participants for which there is not a prudential regulator. The proposed amendments would revise the definition of "margin affiliate" to provide that certain collective investment vehicles that receive a portion or all of their initial equity investment from a sponsoring entity would be deemed not to have any margin affiliates for the purposes of calculating certain thresholds that trigger the requirements to exchange initial margin, effectively relieving swap dealers and major swap participants from posting and collecting initial margin with certain eligible seeded funds for a limited, three year period. The amendments would also include a proposal to eliminate a provision disqualifying the securities issued by certain pooled investment funds that transfer their assets through securities lending, securities borrowing, repurchase agreements, reverse repurchase agreements, and similar arrangements from being used as eligible IM collateral. Finally, the CFTC would include a technical amendment to the haircut schedule set forth in Regulation 23.156(a)(3)(i)(B) to add a footnote that was inadvertently omitted when the rule was originally promulgated. (Sarah Bessin/Nhan Nguyen)

Rule Proposals Expected by September 2022

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)

Amendment to the Made Available to Trade Process. The CFTC expects to propose amendments to the Made Available to Trade (MAT) process to determine swaps that have been made available to trade and therefore are subject to the trade execution requirement. (Sarah Bessin/Nhan Nguyen)

Investment of Customer Funds, Cleared Swap Customer Funds, and 30.7 Customer Funds. The CFTC expects to propose amendments to the regulations governing the investments that futures commission merchants and derivatives clearing organizations may make with funds deposited by customers to margin futures, cleared swaps, and foreign futures transactions, as applicable. (Sarah Bessin/Nhan Nguyen)

Rule Proposal Expected by January 2023

Conflicts of Interest and Governance Requirements for Swap Execution Facilities. In 2010 and 2011, the CFTC proposed requirements to implement the following sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act, insofar as they pertain to conflicts of interest for DCOs, DCMs and SEFs: section 726 (Rulemaking on Conflict of Interest); sections 725(c) and (d) (DCO Core Principles and Conflicts of Interest); section 735(b) (DCM Core Principles); and section 733 (SEF Core Principles). The CFTC did not adopt these requirements. The CFTC will issue a new notice of proposed rulemaking, which will: (1) apply to SEFs; and (2) take into account market and industry developments since the publication of the prior proposals. The proposed rulemaking would amend SEF Core Principle 12 in part 37 of the CFTC's regulations. (Nhan Nguyen/Sarah Bessin)

Rule Proposal Expected by March 2023

Amendments to Certain Provisions in Part 4 Applicable to Commodity Pool Operators and Commodity Trading Advisors. The CFTC expects to propose a rule amending certain requirements for CPOs and CTAs, including increasing the threshold in the portfolio requirement to be a Qualified Eligible Person, imposing minimal disclosure requirements addressing principal risk factors, fees/breakeven table, and conflicts of interest, and extending the deadline for providing quarterly account statements to pool participants from 30 to 45 days. (Rachel Graham/Sarah Bessin)

Dorothy M. Donohue
Deputy General Counsel - Securities Regulation

Sarah A. Bessin
Associate General Counsel

endnotes

[1] The CFTC's regulatory agenda can be accessed at https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=3038&csrf_token=7156F31F1904E6342E7EB30BEA685E3044584F4321DA061E26309DD599A7AA72B0F5A5594A3456222AC96A046CE44319716F.

[2] The CFTC's agenda indicates that the CFTC will issue another seven proposals that would not affect funds or advisers in that same time period.

The SEC's rulemaking agenda is summarized in ICI Memorandum No. 34191 (June 23, 2022), available at <https://www.ici.org/memo34191>.

[3] Although the rulemaking agenda provides a target date of June 2022 for these proposals, none have yet been issued.