

**MEMO# 34786**

January 6, 2023

## **SEC and CFTC Rulemaking Agendas**

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TO: ICI Members  
Investment Company Directors  
Derivatives Markets Advisory Committee  
Disclosure Working Group  
Equity Markets Advisory Committee  
ESG Advisory Group  
ESG Fund Disclosure Working Group  
ESG Public Company Disclosure Working Group  
ESG Task Force  
Fixed-Income Advisory Committee  
SEC Rules Committee SUBJECTS:  
Abandoned Property and Escheatment  
Alternative Investments  
Compliance  
CPO/CTA  
Derivatives  
Disclosure  
ESG  
Fund Accounting & Financial Reporting  
Fund Governance  
Investment Advisers  
Operations  
Trading and Markets  
Transfer Agency

RE: SEC and CFTC Rulemaking Agendas

The Office of Information and Regulatory Affairs released the Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions on January 4, 2023. The agenda includes regulatory actions that the Securities and Exchange Commission and Commodity Futures Trading Commission expect to take between now and October 2023.[\[1\]](#) Seven proposals and two final rules that have already been issued appear on the agenda. The remainder of SEC Chair Gensler's agenda is quite voluminous with eight proposals and ten final rules expected by April 2023 followed by four proposals and seven final rules expected by

October 2023. It appears that the SEC will be focused on finalizing many of its outstanding proposals in the first half of 2023. CFTC Chair Behnam's agenda notes eight proposals and one final rule expected between now and June 2023 that potentially would affect investment companies or investment advisers.

Elements of the SEC's and CFTC's agenda that may affect investment companies or investment advisers are summarized below.

## **Securities and Exchange Commission**

### **Rule Proposals Expected by April 2023<sup>[2]</sup>**

[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.

[Regulation D and Form D Improvements](#). The Division of Corporation Finance is considering recommending that the Commission propose amendments to Regulation D, including updates to the accredited investor definition, and Form D to improve protections for investors.

[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.

[Digital Engagement Practices for Investment Advisers](#). The Division of Investment Management is considering recommending that the Commission propose rules related to the use of predictive data analytics, differential marketing and behavioral prompts.

[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.

[Digital Engagement Practices for Broker-Dealers](#). The Division of Trading and Markets is considering recommending that the Commission propose rules related to the use of predictive data analytics, differential marketing and behavioral prompts.

[Cybersecurity](#). The Division of Trading and 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.

[Clearing Agency Recovery and Wind-Down](#). The Division of Trading and Markets is considering recommending that the Commission propose rules to expand requirements regarding recovery and wind-down plans and to revise certain risk management requirements in Rule 17Ad-22 for clearing agencies.

### **Rule Proposals Expected by October 2023**

[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.

[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.

[Exchange-Traded Products](#). The Commission sought public input to evaluate the listing and trading of Exchange-Traded Products (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 is considering appropriate next steps with respect to these issues.

[Regulation ATS Modernization](#). The Division of Trading and 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.

#### **Final Rules Expected by April 2023**

[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.

[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.

[Share Repurchase Disclosure Modernization](#). The Division of Corporation Finance is considering recommending that the Commission adopt amendments to modernize and improve disclosure about issuers' repurchases of their equity securities that are registered under the Securities Exchange Act of 1934. The Commission proposed amendments that would require an issuer to provide more timely disclosure on new Form SR regarding purchases of its equity securities for each day that it, or an affiliated purchaser, makes a share repurchase. The proposed amendments would also enhance the existing periodic disclosure requirements about these purchases specified in Item 703 of Regulation S-K.

[Prohibition Against Fraud, Manipulation, and Deception in Connection With Security-Based Swaps; Prohibition Against Undue Influence Over Chief Compliance Officers; and Disclosure of SBS Positions](#). The Division of Trading and Markets is considering recommending that the Commission adopt rules to prevent fraud, manipulation, and deception in connection with security-based swaps in accordance with section 9(j) of the Exchange Act, rules to prohibit undue influence over Chief Compliance Officers of security-based swap dealers and major security-based swap participants, as well as adopt rules under section 10B of the Exchange Act to require certain disclosures in connection with security-based swap positions.

[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.

[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.

[Amendments to Exchange Act Rule 3b-16 re Definition of "Exchange"; Regulation ATS and Regulation SCI for ATSs That Trade U.S. Government Securities, NMS Stocks and Other Securities](#). The Division of Trading and Markets is considering recommending that the Commission adopt proposed amendments to 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. The Division is considering recommending that the Commission adopt proposed amendments to Regulation ATS and Regulation SCI for ATSs that trade U.S. 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 Securities Transactions Settlement Cycle](#). The Division of Trading and Markets is considering recommending that the Commission adopt rules to amend Exchange Act Rule 15c6-1(a) to shorten the standard settlement cycle.

[Further Definition of Dealers](#). The Division of Trading and Markets is considering recommending that the Commission adopt amendments to address the definition of dealer.

#### **Final Rules Expected by October 2023**

[Rule 14a-8 Amendments](#). The Division of Corporation Finance is considering recommending that the Commission adopt rule amendments regarding shareholder proposals under Rule 14a-8. The Commission proposed to, among other things, update certain substantive bases for exclusions of shareholder proposals under the Commission's shareholder proposal rule. The proposed amendments would amend the substantial implementation exclusion, the duplication exclusion, and the resubmission exclusion.

[Investment Company Names](#). The Division of Investment Management is considering recommending that the Commission adopt amendments to Investment Company Act rule 35d-1, which applies to names used by registered investment companies. The Commission proposed to amend the rule that addresses certain broad categories of investment company names that are likely to mislead investors about an investment company's investments and risks. The proposed amendments to this rule are designed to increase investor protection by improving and clarifying the requirement for certain funds to adopt a policy to invest at least 80% of their assets in accordance with the investment focus that the fund's name suggests, updating the rule's notice requirements, and establishing recordkeeping requirements. The Commission also proposed enhanced prospectus disclosure requirements for terminology used in fund names, and additional requirements for funds to report information on Form NPORT regarding compliance with the proposed names-related regulatory requirements.

[Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices](#). The Division of Investment Management is considering recommending that the Commission adopt requirements for

investment companies and investment advisers related to environmental, social and governance (ESG) factors, including ESG claims and related disclosures. Among other things, the Commission proposed to amend rules and forms under both the Investment Advisers Act of 1940 and the Investment Company Act of 1940 to require registered investment advisers, certain advisers that are exempt from registration, registered investment companies, and business development companies, to provide additional information regarding their ESG investment practices. The proposed amendments to these forms and associated rules seek to facilitate enhanced disclosure of ESG issues to clients and shareholders. The proposed rules and form amendments are designed to create a consistent, comparable, and decision-useful regulatory framework for ESG advisory services and investment companies to inform and protect investors while facilitating further innovation in this evolving area of the asset management industry.

[Clearing Agency Governance](#). The Division of Trading and Markets is considering recommending that the Commission adopt rules under the Securities Exchange Act of 1934 to help improve the governance of clearing agencies registered with the Commission by reducing the likelihood that conflicts of interest may influence the board of directors or equivalent governing body of a registered clearing agency. The Commission proposed rules that would identify certain responsibilities of the board, increase transparency into board governance, and, more generally, improve the alignment of incentives among owners and participants of a registered clearing agency. In support of these objectives, the proposed rules would establish new requirements for board and committee composition, independent directors, management of conflicts of interest, and board oversight.

[Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities](#). The Division of Trading and Markets is considering recommending that the Commission adopt rules regarding the registration and regulation of security-based swap execution facilities (SBSEFs), conflicts of interest in SBSEFs (as mandated by section 765 of the Dodd-Frank Act) and the cross-border aspects of security-based swap execution. The Commission proposed a set of rules ("Regulation SE") and forms under the Securities Exchange Act of 1934 that would create a regime for the registration and regulation of SBSEFs and address other issues relating to security-based swap (SBS) execution generally. One of the rules proposed as part of Regulation SE would implement part of the Dodd-Frank Act, which is intended to mitigate conflicts of interest at SBSEFs and national securities exchanges that trade SBS. Other rules proposed as part of Regulation SE would address the cross-border application of the Exchange Act's trading venue registration requirements and the trade execution requirement for SBS. In addition, the Commission proposed to amend an existing rule to exempt from the Exchange Act definition of "exchange," certain registered clearing agencies as well as registered SBSEFs that provide a marketplace only for SBS. The Commission also proposed a new rule that, while affirming that an SBSEF would be a broker under the Exchange Act, would exempt a registered SBSEF from certain broker requirements. Finally, the Commission proposed certain new rules and amendments to its Rules of Practice to allow persons who are aggrieved by certain actions by an SBSEF to apply for review by the Commission. The Commission also withdrew all previously proposed rules regarding these subjects.

[Short Sale Disclosure Reforms](#). The Division of Trading and Markets is considering recommending that the Commission adopt proposed rules to implement section 929X(a) of the Dodd-Frank Act.

[Loan or Borrowing of Securities](#). 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. Section 984 of the Dodd-Frank Act provides the Commission with the authority to increase transparency, among other things, with respect to the loan or borrowing of securities. It also mandates that the Commission promulgate rules designed to increase the transparency of information available to brokers, dealers, and investors. The Commission proposed a rule to increase the transparency and efficiency of the securities lending market by requiring any person that loans a security on behalf of itself or another person to report the material terms of those securities lending transactions and related information regarding the securities the person has on loan and available to loan to a registered national securities association (RNSA). The proposed rule would also require that the RNSA make available to the public certain information concerning each transaction and aggregate information on securities on loan and available to loan.

## **Commodity Futures Trading Commission**

### **Prerule Stage Matters**

[Reducing Regulatory Burden: Retrospective Review Under Executive Order 13563](#). In accordance with Executive Order 13563, "Improving Regulation and Regulatory Review," the Commodity Futures Trading Commission (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 to identify these regulations and to provide interested persons an opportunity to submit their views with respect to such regulations.

### [Risk Management for Swap Dealers and Futures Commission Merchants; Amendments](#).

Staff is considering recommending the CFTC issue an advance notice of proposed rulemaking (ANPRM) for certain risk management regulations for futures commission merchants, swap dealers, and major swap participants. The ANPRM would pose questions and solicit feedback on potential updates to CFTC regulations meant to clarify certain requirements and improve regulatory outcomes.

### **Rule Proposals Expected in 2022**[\[3\]](#)

[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.

### [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.

### **Rule Proposals Expected in 2023**

[Amendment to the Made Available to Trade Process](#). Staff expect to recommend that the CFTC propose amendments to the Made Available to Trade (MAT) process to determine swaps that have been made available to trade and are therefore subject to the trade execution requirement.

### [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 for resolution planning.

[System Safeguards Program and Testing Requirements for Certain Commission Registrants](#). The CFTC expects to propose a rule requiring certain Commission registrants to establish and maintain a program of system safeguards and risk analysis with respect to its operations and automated systems to ensure such systems are reliable, secure, and have adequate scalable capacity. Registrants' programs should include areas such as: information security, capacity and performance planning, systems operations, systems development and quality assurance, and physical security.

[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 commodity pool operators and commodity trading advisors, 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.

[Part 40 - Provisions Common to Registered Entities](#). Staff expects to recommend that the CFTC propose revisions to amend, clarify, and improve certain part 40 provisions for registered entities to file new or amended products and rules with the CFTC; and clarify and improve current dormancy regulations.

[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 Commission did not adopt these proposals. 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 previous notices of proposed rulemaking. The proposed rulemaking will amend SEF Core Principle 12 in part 37 of the Commission's regulations.

#### **Final Rules Expected in 2023**

[Governance Requirements for Derivatives Clearing Organizations](#). The CFTC has proposed amendments to certain governance requirements under part 39 of its regulations applicable to derivatives clearing organizations (DCOs). The proposed amendments would require DCOs to establish and consult with one or more risk management committees (RMCs) comprised of clearing members and customers of clearing members on matters that could materially affect the risk profile of the DCO. In addition, the CFTC proposes establishing minimum requirements for RMC composition and rotation, and requiring DCOs to establish and enforce fitness standards for RMC members. The CFTC also proposes requiring DCOs to maintain written policies and procedures governing the RMC consultation process and the role of RMC members. Finally, the proposed amendments would require DCOs to establish one or more market participant risk advisory working groups (RWGs) that

must convene at least quarterly, and adopt written policies and procedures related to the formation and role of the RWG.

Dorothy M. Donohue  
Deputy General Counsel - Securities Regulation

Sarah A. Bessin  
Deputy General Counsel - Markets, SMAs & CITs

## Notes

[1] The SEC's short-term regulatory agenda can be accessed at [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf\\_token=5C1E57A75F69B048CFB6FE409913A7CCB857C70D0FBB30E8273C06B4C292DED20685B7AB2BDD86229A81510918077DC15593](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=5C1E57A75F69B048CFB6FE409913A7CCB857C70D0FBB30E8273C06B4C292DED20685B7AB2BDD86229A81510918077DC15593). While the agenda indicates anticipated timeframes for action, the timing of actual publication of releases may vary.

Proposals regarding Transfer Agent Regulation, Proxy Process Amendments, Portfolio Margining of Uncleared Swaps and Non-Cleared Security Based Swaps and Credit Rating Agencies - Conflicts of Interest and Transparency appear on the long-term agenda with no date for expected next action provided.

The SEC's long-term regulatory agenda can be accessed at [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPubId=202210&showStage=longterm&agencyCd=3235&csrf\\_token=C55DD8942BE3E17F6619021ADBE533B485397DB748FB4B9B3BFF0DD92BBF14386BE396C8589C81A0C2192DE361DE06816C56](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPubId=202210&showStage=longterm&agencyCd=3235&csrf_token=C55DD8942BE3E17F6619021ADBE533B485397DB748FB4B9B3BFF0DD92BBF14386BE396C8589C81A0C2192DE361DE06816C56).

The CFTC's short-term regulatory agenda can be accessed at [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3038&csrf\\_token=5C1E57A75F69B048CFB6FE409913A7CCB857C70D0FBB30E8273C06B4C292DED20685B7AB2BDD86229A81510918077DC15593](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3038&csrf_token=5C1E57A75F69B048CFB6FE409913A7CCB857C70D0FBB30E8273C06B4C292DED20685B7AB2BDD86229A81510918077DC15593).

[2] The Commission has already issued seven proposals which the agenda indicates that it expected to issue by April. They are: (i) Outsourcing by Investment Advisers; (ii) Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting; (iii) Standards for Covered Clearing Agencies for U.S. Treasury Securities and Application of the Broker-Dealer Customer Protection Rule With Respect to U.S. Treasury Securities Fund Advisers; (iv) Regulation Best Execution; (v) Order Competition Rule; (vi) Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders; and (vii) Disclosure of Order Execution Information.

[3] Although the rulemaking agenda provides a target date of December 2022 for these proposals, several have not yet been issued. One proposed rule amendment was issued in December relating to reporting and information requirements for derivatives clearing organizations.



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