

MEMO# 35351

June 15, 2023

SEC and CFTC Rulemaking Agendas

[35351]

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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
Investment Adviser and Broker-Dealer Standards of Conduct Working Group
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 Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions on June 13, 2023. The agenda includes regulatory actions that the Securities and Exchange Commission and Commodity Futures Trading Commission expect to take between now and April 2024.[\[1\]](#) One advance notice of proposed rulemaking, four rule proposals, and four final rules that appear on the agenda have already been issued. The remainder of SEC Chair Gensler's agenda that potentially would affect investment companies or investment advisers is quite voluminous with eight proposals and 20 final rules expected by October 2023 with an additional six proposals and eight final rules expected by April 2024. According to the agenda, the SEC will be focused

on finalizing many of its outstanding proposals in the second half of 2023. CFTC Chair Behnam's agenda notes seven proposals between now and the end of 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 October 2023^[2]

[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.

[Revisions to the Definition of Securities Held of Record](#). The Division of Corporation Finance is considering recommending that the Commission propose amendments to the "held of record" definition for purposes of section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act").

[Prohibition of Conflicted Practices for Investment Advisers That Use Certain Covered Technologies](#). The Division of Investment Management is considering recommending that the Commission propose rules related to investment adviser conflicts in the use of predictive data analytics, artificial intelligence, machine learning, and similar technologies in connection with certain investor interactions.

[Prohibition of Conflicted Practices for Broker-Dealers That Use Certain Covered Technologies](#). The Division of Trading and Markets is considering recommending that the Commission propose rules related to broker-dealer conflicts in the use of predictive data analytics, artificial intelligence, machine learning, and similar technologies in connection with certain investor interactions.

[Registration for Index-Linked Annuities](#). The Division of Investment Management is considering recommending that the Commission propose rules to enable issuers of index-linked annuities to register on a form tailored specifically to registered index-linked annuities pursuant to the Registration for Index-Linked Annuities Act.

[Registration for Internet Advisers](#). The Division of Investment Management is considering recommending that the Commission propose amendments to the exemption for internet advisers from the prohibition against registration under the Investment Advisers Act of 1940 ("Advisers Act").

[Volume-Based Exchange Transaction Pricing](#). The Division of Trading and Markets is considering recommending that the Commission propose a new rule under the Exchange Act to address concerns with national securities exchange volume-based transaction pricing in NMS stocks by requiring exchanges to make periodic public disclosures about those pricing models to facilitate greater transparency of their impact and to mitigate conflicts of

interest and facilitate competition among broker-dealers by prohibiting volume-based pricing by exchanges for agency-related volume.

Rule Proposals Expected by April 2024

[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.

[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.

[Rule 144 Holding Period](#). The Division of Corporation Finance is considering recommending that the Commission repropose amendments to Rule 144, a non-exclusive safe harbor that permits the public resale of restricted or control securities if the conditions of the rule are met.

[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 of Trading and Markets 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 October 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. The proposed rules would require information about a registrant's climate-related risks that are reasonably likely to have a material impact on its business, results of operations, or financial condition. The proposed rules would also require disclosure of a registrant's greenhouse gas emissions and certain climate-related financial metrics in a registrant's audited financial statements.

[Cybersecurity Risk Governance](#). The Division of Corporation Finance is considering recommending that the Commission adopt rule amendments to better inform investors about a registrant's cybersecurity risk management, strategy and governance, and to

provide timely notification of material cybersecurity incidents. The Commission proposed rules to enhance and standardize disclosures regarding cybersecurity risk management, strategy, governance, and cybersecurity incident reporting by public companies that are subject to the reporting requirements of the Exchange Act.

[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 exclusion 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.

[Modernization of Beneficial Ownership Reporting](#). The Division of Corporation Finance is considering recommending that the Commission adopt rule amendments to modernize the beneficial ownership reporting obligations. The Commission proposed amendments that would accelerate the filing deadlines for initial and amended beneficial ownership reports filed on Schedules 13D and 13G. The proposed amendments also would deem holders of certain cash-settled derivative securities as beneficial owners of the reference equity securities and clarify the disclosure requirements of Schedule 13D with respect to derivative securities. In addition, the proposed amendments would clarify and affirm the operation of the beneficial ownership reporting rules as applied to two or more persons that form a group under the Exchange Act and provide new exemptions to permit such persons to communicate with each other, jointly engage issuers, and execute certain transactions without being subject to regulation as a group.

[Safeguarding Advisory Client Assets](#). The Division of Investment Management is considering recommending that the Commission adopt amendments to existing rules and/or adopt new rules under the Advisers Act to improve and modernize the regulations around the custody of funds or investments of clients by investment advisers.

[Investment Company Names](#). The Division of Investment Management is considering recommending that the Commission adopt amendments to rule 35d-1 under the Investment Company Act of 1940 ("Investment Company Act"), 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 N-PORT regarding compliance with the proposed names-related regulatory requirements.

[Money Market Fund Reforms](#). The Division of Investment Management is considering recommending that the Commission adopt reforms relating to the regulation of money market funds. The Commission proposed to remove the liquidity fee and redemption gate provisions in the existing rule, and to require certain money market funds to implement swing pricing policies and procedures. The Commission also proposed to increase minimum liquidity requirements for money market funds, as well as reporting and disclosure amendments. In addition, the Commission proposed rule amendments to address how money market funds with stable net asset values should handle a negative interest rate

environment.

[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 Advisers Act and the Investment Company Act 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.

[Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting.](#) The Division of Investment Management is considering recommending that the Commission adopt changes to regulatory requirements relating to open-end fund's liquidity and dilution management. The Commission proposed amendments to its current rules for open-end management investment companies ("open-end funds") regarding liquidity risk management programs and swing pricing. The proposed amendments are designed to improve liquidity risk management programs to better prepare funds for stressed conditions and improve transparency in liquidity classifications. The amendments are also designed to mitigate dilution of shareholders' interests in a fund by requiring any open-end fund, other than a money market fund or exchange-traded fund, to use swing pricing to adjust a fund's net asset value (NAV) per share to pass on costs stemming from shareholder purchase or redemption activity to the shareholders engaged in that activity. In addition, to help operationalize the proposed swing pricing requirement, and to improve order processing more generally, the Commission proposed a "hard close" requirement for these funds. Finally, the Commission proposed amendments to reporting and disclosure requirements on Forms N-PORT, N-1A, and N-CEN that apply to certain registered investment companies, including registered open-end funds (other than money market funds), registered closed-end funds, and unit investment trusts. The proposed amendments would require more frequent reporting of monthly portfolio holdings and related information to the Commission and the public, amend certain reported identifiers, and make other amendments to require additional information about funds' liquidity risk management and use of swing pricing.

[Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews.](#) The Division of Investment Management is considering recommending that the Commission adopt rules under the Advisers Act to address lack of transparency, conflicts of interest, and certain other matters involving private fund advisers.

[Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies.](#) 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. The Commission proposed new rules to require registered investment advisers and investment companies to adopt and implement written cybersecurity policies and

procedures reasonably designed to address cybersecurity risks. The Commission also proposed a new rule and form under the Advisers Act to require advisers to report significant cybersecurity incidents affecting the adviser, or its fund or private fund clients, to the Commission. With respect to disclosure, the Commission proposed amendments to various forms regarding the disclosure related to significant cybersecurity risks and cybersecurity incidents that affect advisers and funds and their clients and shareholders. Finally, the Commission proposed new recordkeeping requirements under the Advisers Act and Investment Company Act.

[Clearing Agency Governance](#). The Division of Trading and Markets is considering recommending that the Commission adopt rules under the Exchange Act 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 Exchange Act 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 SBSs. 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 SBSs. 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 SBSs. 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, which requires the Commission to adopt rules providing for the public disclosure of short sale information.

[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 also 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 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.

[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.

[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](#). The Division of Trading and Markets is considering recommending that the Commission adopt requirements for registered clearing agencies for government securities regarding the clearance of certain trades and repo transactions involving government securities. The Commission proposed to amend the standards applicable to covered clearing agencies for U.S. Treasury securities to require that such covered clearing agencies have written policies and procedures reasonably designed to require that every direct participant of the covered clearing agency submit for clearance and settlement all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty. In addition, the Commission proposed additional amendments to the Covered Clearing Agency Standards, with respect to risk management. These requirements are designed to protect investors, reduce risk, and increase operational efficiency. Finally, the Commission proposed to amend the broker-dealer customer protection rule to permit margin required and on deposit with covered clearing agencies for U.S. Treasury securities to be included as a debit in the reserve formulas for accounts of customers and proprietary accounts of broker-dealers, subject to certain conditions.

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

[Reporting of Security-Based Swap Positions](#). The Division of Trading and Markets is considering recommending that the Commission adopt rules under section 10B of the Exchange Act to require certain disclosures in connection with security-based swap

positions. This entry was previously part of a separate rule proposal but is being split off into its own entry.

Final Rules Expected by April 2024

[Prohibition Against Conflicts of Interest in Certain Securitizations](#). The Division of Corporation Finance is considering recommending that the Commission adopt 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. The proposed rules would prohibit, for a specified period, a securitization participant from engaging in any transaction that would result in a material conflict of interest between a securitization participant and an investor in the relevant asset-backed security. As specified in section 621, the proposed rule would provide exceptions for risk-mitigating hedging activities, bona fide market-making activities, and liquidity commitments.

[Outsourcing by Investment Advisers](#) The Division of Investment Management is considering recommending that the Commission adopt rules related to the oversight of third-party service providers. The Commission proposed a new rule under the Advisers Act to prohibit registered advisers from outsourcing certain services or functions without first meeting minimum requirements. The proposed rule would require advisers to conduct due diligence prior to engaging a service provider to perform certain services or functions. It would further require advisers to periodically monitor the performance and reassess the retention of the service provider in accordance with due diligence requirements to reasonably determine that it is appropriate to continue to outsource those services or functions to that service provider. The Commission also proposed corresponding amendments to the investment adviser registration form to collect census-type information about the service providers defined in the proposed rule. In addition, the Commission proposed related amendments to the Advisers Act books and records rule, including a new provision requiring advisers that rely on a third party to make and/or keep books and records to conduct due diligence and monitoring of that third party and obtain certain reasonable assurances that the third party will meet certain standards.

[Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information](#). The Division of Investment Management and Division of Trading and Markets are considering recommending that the Commission adopt amendments to Regulation S-P. The Commission proposed rule amendments that would require brokers and dealers, investment companies and investment advisers registered with the Commission to adopt written policies and procedures for incident response programs to address unauthorized access to or use of customer information, including procedures for providing timely notification to individuals affected by an incident involving sensitive customer information with details about the incident and information designed to help affected individuals respond appropriately. The Commission also proposed to broaden the scope of information covered by amending requirements for safeguarding customer records and information, and for properly disposing of consumer report information. In addition, the proposed amendments would extend the application of the safeguards provisions to transfer agents. The proposed amendments would also include requirements to maintain written records documenting compliance with the proposed amended rules. Finally, the proposed amendments would conform annual privacy notice delivery provisions to the terms of an exception provided by a statutory amendment to the Gramm-Leach-Bliley Act.

[Order Competition Rule](#). The Division of Trading and Markets is considering recommending that the Commission amend the regulation governing the National Market System under

the Exchange Act to add a new rule designed to promote competition as a means to protect the interests of individual investors and to further the objectives of a National Market System. The rule would prohibit a restricted competition trading center from internally executing certain orders of individual investors at a given price unless the orders are first exposed to competition at that price in a qualified auction operated by an open competition trading center. The rule would include limited exceptions to this general prohibition. In addition, the Division is considering recommending that the Commission amend the regulation governing the National Market System to add new defined terms to the rule.

[Cybersecurity Risk Management Rules for Broker-Dealers, Clearing Agencies, MSBSPs, the MSRB, National Securities Associations, National Securities Exchanges, SBSDRs, SBS Dealers, and Transfer Agents](#). The Division of Trading and Markets is considering recommending that the Commission adopt amendments to require that market entities address cybersecurity risks, to improve the Commission's ability to obtain information about significant cybersecurity incidents impacting market entities, and to improve transparency about cybersecurity risk in the U.S. securities markets. The Commission proposed a new rule and form and amendments to existing recordkeeping rules to require broker-dealers, clearing agencies, major security-based swap participants, the Municipal Securities Rulemaking Board, national securities associations, national securities exchanges, security-based swap data repositories, security-based swap dealers, and transfer agents to address cybersecurity risks through policies and procedures, immediate notification to the Commission of the occurrence of a significant cybersecurity incident and, as applicable, reporting detailed information to the Commission about a significant cybersecurity incident, and public disclosures that would improve transparency with respect to cybersecurity risks and significant cybersecurity incidents. In addition, the Commission proposed amendments to existing clearing agency exemption orders to require the retention of records that would need to be made under the proposed cybersecurity requirements. Finally, the Commission proposed amendments to address the potential availability to security-based swap dealers and major security-based swap participants of substituted compliance in connection with those requirements.

[Disclosure of Order Execution Information](#). The Division of Trading and Markets is considering recommending that the Commission amend existing requirements under the Exchange Act to update the disclosure required for order executions in NMS stocks. The Commission proposed to expand the scope of reporting entities subject to the rule that requires market centers to make available to the public monthly execution quality reports to encompass broker-dealers with a larger number of customers. The Commission also proposed to modify the definition of "covered order" to include certain orders submitted outside of regular trading hours and certain orders submitted with stop prices. In addition, the Commission proposed modifications to the information required to be reported under the rule, including changing how orders are categorized by order size as well as how they are categorized by order type. Finally, the Commission proposed to enhance the accessibility of the required reports by requiring all reporting entities to make a summary report available.

[Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders](#). The Division of Trading and Markets is considering recommending that the Commission amend certain rules of Regulation National Market System under the Exchange Act to adopt variable minimum pricing increments for the quoting and trading of NMS stocks, reduce the access fee caps, and enhance the transparency of better priced orders.

[Regulation Best Execution](#). The Division of Trading and Markets is considering

recommending that the Commission adopt new rules under the Exchange Act relating to a broker-dealer's duty of best execution. Proposed Regulation Best Execution would enhance the existing regulatory framework concerning the duty of best execution by requiring detailed policies and procedures for all broker-dealers and more robust policies and procedures for broker-dealers engaging in certain conflicted transactions with retail customers, as well as related review and documentation requirements.

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 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 CFTC expects to identify these regulations and to provide interested persons an opportunity to submit their views with respect to such regulations.

Rule Proposals Expected in 2023^[3]

[Amendment to the Made Available to Trade Process](#). Staff expects 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.

[Operational Resilience Program for Certain Commission Registrants](#). The CFTC expects to propose a rule requiring certain CFTC registrants to establish and maintain a program of system safeguards and risk analysis with respect to its operations and information 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.

[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 (DCO) may make with funds deposited by customers to margin futures, cleared swaps, and foreign futures transactions, as applicable.

[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 Act, insofar as they pertain to conflicts of interest for DCOs, designated contract markets (DCMs) and swap execution facilities (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 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 Principles 12 and 15 in part 37 of the CFTC's regulations, to better align with existing requirements for DCMs. The rulemaking will also amend DCM Core Principles 15 and 16 in part 38 of the CFTC's regulations, to codify previously published acceptable practices, to provide regulatory certainty and to reflect industry best practice standards.

[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 (IM), effectively relieving swap dealers and major swap participants from posting and collecting IM 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.

Final Rules Expected in 2023[4]

No expected final rules that may affect investment companies or investment advisers are listed that have not yet been adopted.

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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¤tPub=true&agencyCode=&showStage=active&agencyCd=3235&csrf_token=

[5C1E57A75F69B048CFB6FE409913A7CCB857C70D0FBB30E8273C06B4C292DED20685B7AB2BDD86229A81510918077DC15593](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPubId=202304&showStage=longterm&agencyCd=3235&csrf_token=849FA1D26A65C7EB68B533FD32852531346CED2C8A19B4DB61EEDDE6941AF2E066D8260BCA89334E8269B0425CA9831FD20A). While the agenda indicates anticipated timeframes for action, the timing of actual publication of releases may vary.

There are six proposals that may affect investment companies or investment advisers on the long-term agenda with no date for expected next action provided. Those proposals are with respect to Transfer Agents, Certain Information Providers Acting as Investment Advisers, Proxy Process Amendments, Portfolio Margining of Uncleared Swaps and Non-Cleared Security Based Swaps, Amendments to Rules 17a-25 and 13h-1 Following Creation of the Consolidated Audit Trail, and Credit Rating Agencies - Conflicts of Interest and Transparency.

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=202304&showStage=longterm&agencyCd=3235&csrf_token=849FA1D26A65C7EB68B533FD32852531346CED2C8A19B4DB61EEDDE6941AF2E066D8260BCA89334E8269B0425CA9831FD20A.

The CFTC's short-term 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=5C1E57A75F69B048CFB6FE409913A7CCB857C70D0FBB30E8273C06B4C292DED20685B7AB2BDD86229A81510918077DC15593.

[2] The Clearing Agency Recovery and Wind-Down proposal was issued on May 17, 2023 even though the agenda indicates that it will be issued by October.

[3] The CFTC has already issued two proposals that potentially would affect investment companies and investment advisers indicated on the agenda to be issued by Spring 2023: (i) Recovery and Wind-down Plans for Derivative Clearing Organizations; Information Necessary for Resolution Planning issued June 7, 2023; and (ii) Treatment of Separate Accounts by Futures Commission Merchants, issued March 22, 2023 with the comment period closing date extended until June 30, 2023.

[4] The CFTC has already adopted one final rule that potentially would affect investment companies and investment advisers indicated on the agenda to be adopted in Spring 2023, which was the Governance Requirements for Derivatives Clearing Organizations issued June 7, 2023.