

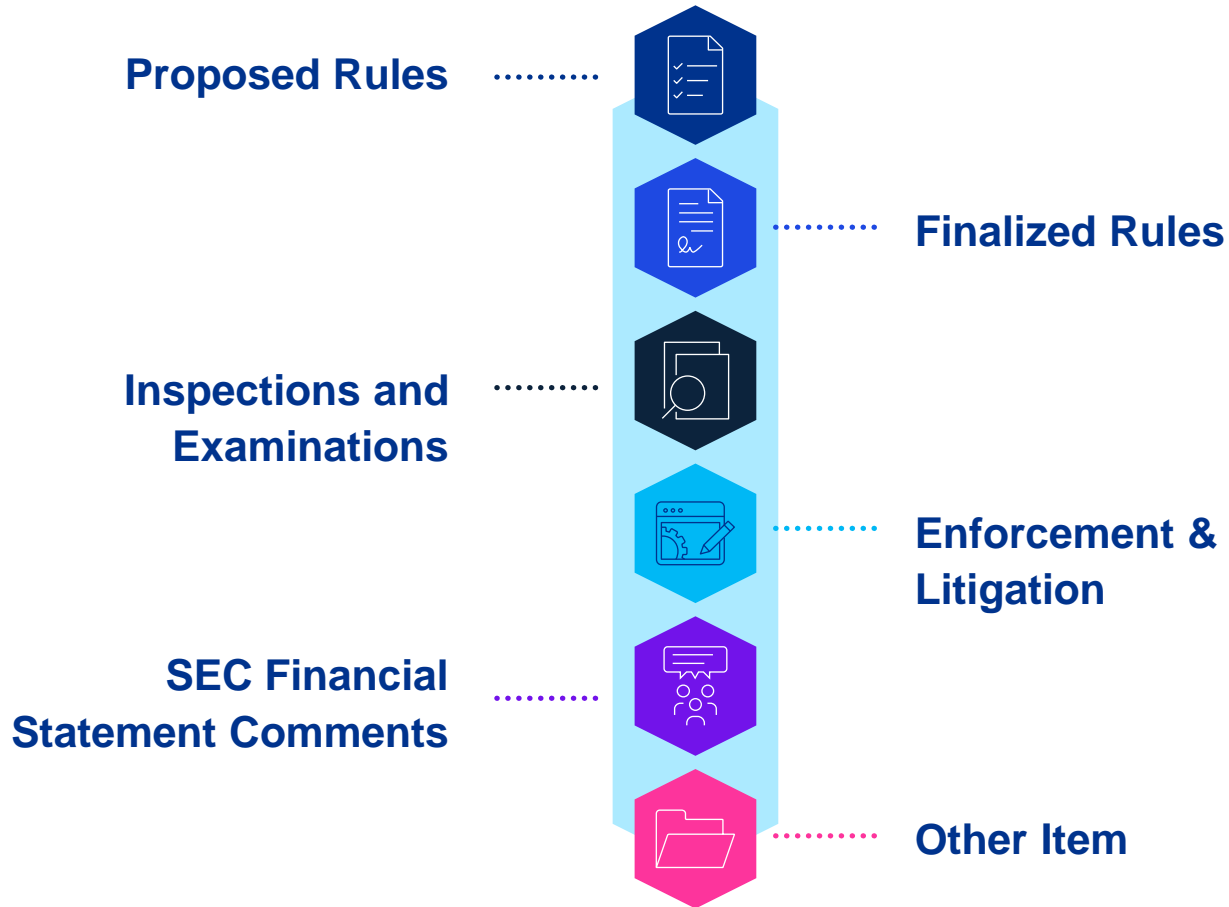


U.S. SEC Division of Investment Management Update

September 2024



Agenda



Source: *The New York Times* September 4, 2012; *The New York Times* October 11, 2012



Proposed Rules

- Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers
 - The proposed rule would require SEC-registered investment advisers (RIAs) and exempt reporting advisers (ERAs) to, among other things, implement a Customer Identification Program (CIP) that includes procedures for:
 - Verifying the identity of each customer to the extent reasonable and practicable; and
 - Maintaining records of the information used to verify a customer's identity
 - Public comment period is over



Proposed Rules (continued)

- Safeguarding Advisory Client Assets

- The proposed amendments would:

- Expand the current custody rule to protect a broader array of client assets and advisory activities to the rule's protections;
- Enhance the custodial protections that client assets receive under the rule; and
- Update related recordkeeping and reporting requirements for advisers

- Public comment period is over



Proposed Rules (continued)

- Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers
 - The proposal would require:
 - A firm to eliminate or neutralize the effect of conflicts of interest associated with the firm's use of covered technologies in investor interactions;
 - A firm that has any investor interaction using covered technology to have written policies and procedures reasonably designed to prevent violations of (in the case of investment advisers) or achieve compliance with (in the case of broker-dealers) the proposed rules; and
 - Recordkeeping related to the proposed conflicts rules
 - Public comment period is over



Finalized Rules

- Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk
 - The rule requires:
 - Timelier reporting of funds' monthly portfolio holdings and related information to the SEC;
 - Providing for more frequent public disclosure of funds' portfolio holdings; and
 - Requiring information about service providers that open-end funds use to comply with liquidity risk management program requirements.
 - In connection with the amendments, the SEC also provided guidance related to open-end fund liquidity risk management program requirements.
 - The amendments will become effective November 17, 2025. Compliance date for funds with net assets less than \$1 billion is May 18, 2026



Finalized Rules (continued)

- Qualifying Venture Capital Funds Inflation Adjustment
 - The rule allows the SEC to adjust for inflation the dollar threshold used in defining a “qualifying venture capital fund” under the Investment Company Act of 1940
- Registration for Index-Linked Annuities and Registered Market Value Adjustment Annuities and Amendments to Form N-4
 - The rule provides a tailored form to register the offerings of registered index-linked annuity and registered market value adjustment annuities on Form N-4



Finalized Rules (continued)

- Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information
 - The rule requires brokers and dealers (or “broker-dealers”), investment companies, RIA funding portals, and transfer agents 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
 - The rule extends the application of requirements to safeguard customer records and information to transfer agents and broadens the scope of information covered
 - The rule imposes requirements to maintain written records documenting compliance with the amended rules
 - The amendments will become effective December 2025.



Inspections

- 2024 Examination priorities
 - Adherence to the fiduciary standard with a focus on:
 - Complex products and unconventional strategies
 - Processes for determining that the advice is in the client's best interest
 - Economic incentives to financial professionals for recommending products and services
 - Completeness, accuracy and representational faithfulness of disclosures to clients



Inspections (continued)

- 2024 Examination priorities
 - Efficacy and completeness of compliance programs with a focus on assessments, policies and procedures of:
 - Marketing practices
 - Compensation arrangements and conflicts
 - Valuation of illiquid or difficult to value investments
 - Safeguarding of clients' material non-public information
 - Accurate and complete regulatory filings



Inspections (continued)

- 2024 Examination priorities
 - Policies and procedures for:
 - Selecting and using third-party and affiliated service providers
 - Overseeing branch offices
 - Obtaining informed consent from clients when advisers implement material changes to their advisory agreements



Inspections (continued)

- 2024 Examination priorities
 - Advice to private funds with a focus on:
 - Portfolio risks present when there is an exposure to recent market volatility and higher interest rates
 - Adherence to contractual requirements regarding limited partnership advisory committees or similar structures (e.g., advisory boards)
 - Accurate calculations of fees and expenses
 - Due diligence practices
 - Conflicts, controls and disclosures
 - Custody
 - Form PF Reporting



Inspections (continued)

- 2024 Examination priorities
 - Investment company topics:
 - Fees and expenses with a focus on:
 - Charging different advisory fees to different share classes of the same fund
 - Identical strategies offered by the same sponsor through different distribution channels with differing fee structures
 - High advisory fees relative to peers, performance and from an absolute basis
 - Derivative risk management programs
 - Valuation programs



Enforcement & Litigation

- SEC Charges Independent Director and Ex-CEO with Concealing Close Friendship with Company Executive – 9/30/24
- Advisory Firm Charged with Policies Failures Regarding Potential Receipt of Confidential Information from Ad Hoc Creditors' Committees – 9/30/24
- SEC Charges Advisory Firm with Violating Whistleblower Protection Rule – 9/26/24 & 9/9/24
 - SEC is clear it is not appropriate to enter into agreements or activities that impose barriers to persons providing evidence about possible securities law violations to the SEC
- Off-channel communication activities – 9/24/24
- Marketing rule violations – 9/9/24
- Custody rule and liability disclaimers – 9/3/24



Enforcement & Litigation

- SEC charges advisory firm with fraud related to the valuation of odd-lot fixed income securities – 9/19/24
 - Advisor settled charges related to overvaluing approximately 4,900 largely illiquid collateralized mortgage obligations (CMOs) held in accounts and mutual funds and for executing hundreds of cross trades between advisory clients that favored certain clients over others
 - The overvaluation stemmed from thousands of smaller-sized “odd lot” CMO positions that traded at a discount to institutional, larger-sized positions.
 - The adviser valued the odd lot CMOs using prices obtained from a third-party pricing service that were intended for institutional lots only. The SEC found the adviser had no reasonable basis for believing it could sell these positions at the institutional lot values recorded.
 - The order further finds that the adviser attempted to minimize losses to redeeming investors by arranging cross trades with affiliated accounts, rather than selling the overvalued CMOs into the market.



Financial Statement Comments

- Expanded use of data tools to review both structured and unstructured data in filings with the SEC to identify risks, outliers and discrepancies
- Material weaknesses – 17 mutual funds and 6 business development companies
 - Valuation and taxes are the theme
 - Expect staff to reach out to understand the issue
- Restatements
 - SEC expects registrants to have a thorough materiality assessment consistent with Staff Accounting Bulletin (SAB) 99
 - It is not uncommon for the SEC to disagree with filer SAB 99 assessments
 - Pay close attention to a speech made by Paul Munter, the current chief accountant for the SEC
 - <https://www.sec.gov/newsroom/speeches-statements/munter-statement-assessing-materiality-030922>



Financial Statement Comments (continued)

- Tailored shareholder report
 - SEC is noticing several issues in the first month of filings such as:
 - Expense information
 - Inappropriate tagging of benchmarks
 - Website issues such as incorrect links and hard to find financial statements and prospectus
- General
 - Extraordinary expenses are truly extraordinary, things that are not extraordinary are proxy costs, audit costs, and interest expense
 - Restricted securities – required to disclosure on a security-by-security basis the acquisition date and cost



Financial Statement Comments (continued)

- Future Areas of Focus

- Private credit
- Fixed income instruments with handling of PIK, defaults, non-accruals and restructurings
- MD&A and MDFP
- Real estate
- Consolidation analysis of underlying JVs and operating companies
- Whether real estate investment trust type disclosures are warranted



Other Item

- SEC Announces Departure of Enforcement Director Gurbir S. Grewal
 - Effective 10/11/24
 - Sanjay Wadhwa, the Division's Deputy Director will serve as the Acting Director
 - Sam Waldon, the Division's Chief Counsel will serve as the Acting Deputy Director



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