

2024 SEC Regulatory Outlook – Broker-Dealers

Broker-dealers face a tsunami of new regulation in 2024 and beyond. This paper highlights newly effective regulation and provides an overview of final rules issued in 2023, along with updates on significant outstanding proposals. The developments are a reminder of recently issued accounting and other guidance that may affect you. This update is intended as general information and should not be relied upon as being definitive or all-inclusive.

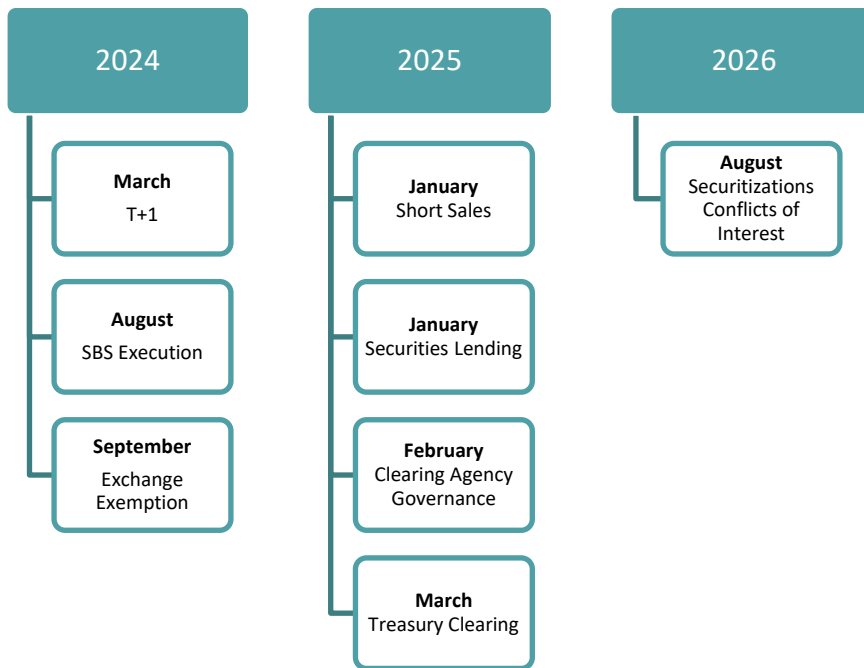
A. Regulatory Agenda

The fall reg flex agenda was published in the **Federal Register** in December. Most items were carried forward from previous agendas.

Fall 2023 Reg Flex Agenda ¹ – Division of Trading & Markets	
Planned Proposals	Planned Final Rules
Single stock exchange-traded funds (ETFs)	Consolidated Audit Trail (CAT) data security
Regulation D improvements	Clearing agency resilience
Regulation ATS modernization	Exchange definition (Rule 3b-16)
	Dealer definition
	Regulation best execution
	Regulation NMS – Tick Size
	Order competition
	Order execution disclosures
	Cybersecurity broker-dealers
	Regulation SCI
	Daily 15c3-3 lockup
	Predictive data
	Regulation SP – Customer Privacy

¹ The SEC is not precluded from considering or acting on any matter not included in the agenda, and an agency is not required to consider or act on any matter that is included in the agenda.

B. Final Rules on the Horizon



1. T+1 Settlement

The [final rule](#) reduces risks in the clearance and settlement of securities as follows:

- Shorten the standard settlement cycle for securities transactions from two business days after trade date (T+2) to one business day after trade date (T+1) on March 31, 2024
- Eliminate the separate T+4 settlement cycle for firm commitment offerings priced after 4:30 p.m.
- Improve the processing of institutional trades by proposing new requirements for broker-dealers and registered investment advisers (RIAs) intended to improve the rate of same-day affirmations
- Facilitate straight-through processing by proposing new requirements applicable to clearing agencies that are central matching service providers



Resources:

- [Ready for T+1 Settlement by May 2024?](#)
- [Five Steps to Prepare for T+1 – Key Updates to Know](#)
- [Exploring the Global Impact of T+1](#)

2. Security-Based Swaps Execution

On November 2, 2023, the SEC issued a [final rule](#) that:

- Creates a regime for the registration and regulation of security-based swap execution facilities (SBSEFs)
- Addresses various issues relating to the “trade execution requirement” for security-based swaps (SBSs)
- Addresses conflicts of interest at SBSEFs and national securities exchanges (NSEs) that trade SBSs
- Promotes consistency between SBSEFs’ rules and the *Securities Exchange Act of 1934*



3. Exemption for Certain Exchange Members

On August 23, 2023, the SEC adopted [amendments](#) to an exemption from Section 15(b)(8) of the Exchange Act that requires any SEC-registered broker or dealer to become a member of a national securities association unless the broker or dealer effects transactions in securities solely on an exchange of which it is a member. The Financial Industry Regulatory Authority, Inc. (FINRA) currently is the only registered national securities association.

Exchange Act Rule 15b9-1 provides an exemption from §15(b)(8) to certain proprietary trading dealers that effect securities transactions other than on an exchange where they are members. The amendments to Rule 15b9-1 set forth narrower exemptions to enhance FINRA oversight of firms that trade securities proprietarily across markets.



4. Short Sales

On October 13, 2023, the SEC issued new [Rule 13f-2](#) and updated the CAT to increase market transparency on short activity on equity securities. Institutional investment managers must report certain short sale-related data to the SEC monthly, 14 days after month-end. At the end of the following month, the SEC would publicly report aggregate data about large short positions, including daily short sale activity for each individual security.

Resource: [SEC Finalizes New Short Sale Disclosures](#)



5. Securities Loans Reporting

On October 13, 2023, the SEC approved new [Rule 10c-1a](#) to increase transparency in the securities lending market by mandating disclosures for security lenders. This rule not only covers investment companies but also banks, insurers, and pension plans. Only 12 pieces of data are required, but the implementation effort is substantial.

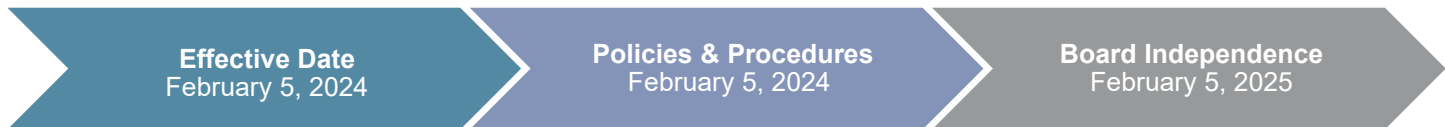
Resource: [SEC New Disclosures on Securities Lending](#)



6. Clearing Agency Governance & Conflicts of Interest

On November 16, 2023, the SEC adopted [rules](#) to establish new governance requirements for all registered clearing agencies, including requirements:

- For independent directors and for the composition of a registered clearing agency’s board of directors, nominating committee, and risk management committee
- To identify, mitigate, or eliminate conflicts of interest involving directors or senior managers and to document such actions
- For policies and procedures that obligate directors to report conflicts of interest
- For policies and procedures for the management of risks from relationships with service providers for core services
- For policies and procedures for the board to solicit, consider, and document the views of participants and other relevant stakeholders



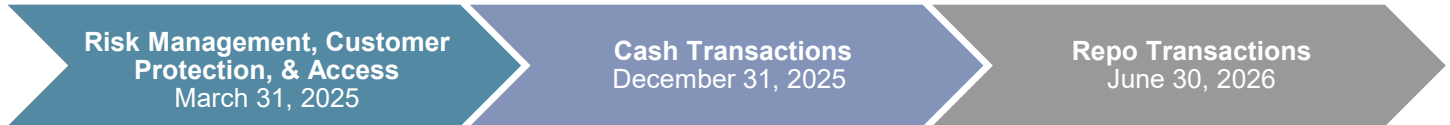
7. Treasury Clearing & Broker-Dealer Customer Protection Rule

On December 13, 2023, the SEC issued a [final rule](#) expanding the use of central clearing for U.S. Treasury securities for secondary market transactions, including:

- All repurchase and reverse repurchase agreements collateralized by U.S. Treasury securities to which a direct participant is a counterparty
- All purchase and sale transactions of U.S. Treasury for direct participants who are acting as interdealer brokers
- All purchases and sales of U.S. Treasury securities between a direct participant and a registered broker-dealer, government securities dealer, or government securities broker; a hedge fund; and a levered account

To address a jump in margin requirements resulting from increased central clearing, the proposal also would update the broker-dealer customer protection rules to permit margin required and on deposit at a covered clearing agency to be included as a debit item in the customer reserve formula, subject to certain conditions.

The SEC cited the March 2020 COVID-19 market disruptions and the increased U.S. Treasury trading by principal trading firms and hedge funds that are not centrally cleared as the primary reasons for the changes.



8. Conflicts of Interest – Securitization

On November 27, 2023, the SEC issued a [final rule](#) completing a Dodd-Frank Act mandate to prohibit conflicts of interest in securitizations. The rule covers an asset-backed security (ABS) and hybrid cash and synthetic ABS and applies to any underwriter, placement agent, initial purchaser, or ABS sponsor. The rule prohibits a securitization participant from entering a conflicted transaction for a period ending one year after the date of the first closing of the ABS’ sale. Conflicted transactions are defined as follows:

- Transaction is:
 - A short sale of the ABS
 - The purchase of a credit default swap or other credit derivative that entitles the securitization participant to receive payments upon the occurrence of specified credit events with respect to the ABS
 - The purchase or sale of any financial instrument (other than the relevant ABS) or entry into a transaction that is substantially the economic equivalent of a transaction described in the first two bullet points above, other than—for the avoidance of doubt—any transaction that only hedges general interest rate or currency exchange risk

- Materiality – Is there a substantial likelihood a reasonable investor would consider the relevant transaction important to the investor’s investment decision, including a decision whether to retain the ABS?

There are certain exceptions for hedging and risk management.



C. Significant Outstanding 2023 Proposals

1. Cybersecurity Risk Management – Broker-Dealers & Other Market Participants

On March 15, 2023, the SEC issued a [proposal](#) that addresses cybersecurity risk management policies and procedures for broker-dealers, the Municipal Securities Rulemaking Board, clearing agencies, major SBS participants, national

securities associations, NSEs, SBS data repositories, SBS dealers, and transfer agents, collectively, “market entities.” Under new Rule 10, all market entities must establish, maintain, and enforce written policies and procedures that are reasonably designed to address their cybersecurity risks. At least annually, market entities also would be required to review and assess the design and effectiveness of their cybersecurity policies and procedures, including whether they reflect changes in cybersecurity risk over the review period. Covered entities also would need to give the SEC immediate written electronic notice of a significant cybersecurity incident upon having a reasonable basis to conclude that the significant cybersecurity incident had occurred or is occurring. New Form SCIR would require information about the entity’s efforts to respond to—and recover from—the cyber incident and would be filed with the SEC and posted on the entity’s website. Covered broker-dealers, subject to additional requirements, would include carrying and introducing broker-dealers, broker-dealers with regulatory capital equal to or exceeding \$50 million, broker-dealers with total assets equal to or exceeding \$1 billion, broker-dealers that operate as market makers, and broker-dealers that operate an alternative trading system (ATS).

The SEC received 245 letters mostly supporting the proposal. Some respondents felt the scope was too broad and costly while others suggested the scope could be expanded.

2. Regulation System Compliance & Integrity (SCI)

Regulation SCI was adopted in 2014 to strengthen the technology infrastructure of the U.S. securities markets. Regulation SCI applies to certain entities and covers automated and similar systems that directly support any one of six key securities market functions—trading, clearance and settlement, order routing, market data, market regulation, or market surveillance—as well as systems that, if breached, would be reasonably likely to pose a security threat to SCI systems. These systems include those outsourced to third parties. The [proposed amendments](#) would expand the definition of SCI entities to include:

- Registered SBS data repositories
- Broker-dealers registered with the commission under §15(b) that exceed a total assets threshold or a transaction activity threshold in NMS stocks, exchange-listed options, U.S. Treasury securities, or agency securities
- All clearing agencies exempted from registration

The proposal updates and strengthens Regulation SCI, including to:

- Specify that an SCI entity’s required policies and procedures include:
 - An inventory, classification, and life cycle management program for SCI systems and indirect SCI systems
 - A program to manage and oversee third-party providers, including cloud service providers, that provide or support SCI or indirect SCI systems
 - Business continuity and disaster recovery
 - A program to prevent unauthorized access to SCI systems and information therein
 - Identification of current SCI industry standards with which each such policy and procedure is consistent, if any
- Amend the definition of “systems intrusion” to include additional types of cyber events and threats, which is intended to capture cybersecurity events such as certain distributed denial-of-service attacks, and require notification of systems intrusions to the SEC without delay

- Update the SCI review to specify that objective personnel assess the risks to covered systems, internal control design and operating effectiveness, and third-party provider management risks and controls, and require penetration testing at least annually
- Specify that SCI entities include key third-party providers in annual BC/DR testing

The SEC received 40 letters with hard pushback from industry participants, most notably from large market makers and cloud providers who would be covered by the rule for the first time. While most agreed the data security is critically important to capital markets, the feedback said that the SEC's "isolated and piecemeal approach to comprehensive rulemaking is substantively and procedurally flawed." NYCE, CBOE, OCC, and DTCC weighed in with several suggestions for improving the SCI regulations.

3. Regulation S-P, Privacy of Consumer Information

On March 15, 2023, the SEC approved a [proposal](#) that would update Regulation S-P (issued in 2000). The rule covers broker-dealers, investment companies, RIAs, and transfer agents. Changes include:

- Covered institutions must adopt written policies and procedures for an incident response program to address unauthorized access to or use of customer information. The incident response program should be reasonably designed to detect, respond to, and recover from unauthorized access to or use of customer information; include procedures to assess the nature and scope of any such incident; and contain and control such incidents
- Covered institutions must have written policies and procedures to provide timely notification (no later than 30 days after an incident) to affected individuals whose sensitive customer information was or is reasonably likely to have been accessed or used without authorization
- Broadening the scope of information covered by Regulation S-P's requirements

Feedback was mixed. There was some general support, but other respondents felt the proposal was too complex and costly to implement, especially for smaller entities.

4. Covered Clearing Agency (CCA) Resilience, Recovery, & Wind-Down

A May 17, 2023 [proposal](#) would amend the current rules on intraday margin and the use of substantive inputs to a CCA's risk-based margin system and add a new rule with nine specific requirements for a CCA's recovery and wind-down plan.

Seventeen comment letters were received. There was general support to codify existing guidance to be consistent with international standards, but there was pushback on the proposal's prescriptiveness and potential costs versus benefits on some requirements. The Intercontinental Exchange noted, "certain aspects are overly prescriptive and are unrealistic considering the practical limitations on a CCA's ability to plan for extreme loss scenarios." Several respondents requested additional time to review the SEC's proposal and the Commodity Futures Trading Commission (CFTC) proposal to help ensure consistency.

5. Daily 15c-3-3 Calculations

The July 12, 2023 [proposal](#) would require daily 15c-3-3 calculations and lockup for carrying broker-dealers with customer credits exceeding \$250 million.

Resources:

[Daily 15c3-3 Calculations Coming Soon?](#)

[Brokering Changes: Why Daily Reporting Should Compute](#)

The SEC received 70 comment letters. Investors almost universally supported the changes. There were several requests to reconsider the \$250 million threshold and tweaks to the on-ramp and off-ramp requirements. There was pushback on cost for smaller firms (most notably from SIFMA) and the impact of several other final rules to be implemented in the same time frame (most notably T+1 implementation).

6. Conflicts of Interest on Predictive Data Analytics Use by Broker-Dealers & Investment Advisers

On July 26, 2023, the SEC issued a [proposal](#) that would require:

- A firm to eliminate or neutralize the effect of conflicts of interest related to the firm's use of covered technologies in investor interactions that place the firm's or its associated person's interest ahead of investors' interests
- Investment advisers and broker-dealers using covered technology must have written policies and procedures reasonably designed to comply with the proposal
- Record-keeping related to the proposed conflicts rules

"Covered technology" includes a firm's use of analytical, technological, or computational functions, algorithms, models, correlation matrices, or similar methods or processes that optimize for, predict, guide, forecast, or direct investment-related behaviors of an investor. This would generally apply to the use of a covered technology in a firm's engagement or communication with an investor, including by exercising discretion with respect to an investor's account, providing information to an investor, or soliciting an investor.

One hundred and thirty-six comments were received with universally negative feedback noting that the changes would harm both investors and the trading markets. Many felt that some of the recent tech innovations have brought a younger and more diverse group of investors into the capital markets and on a path to long-term financial security and generational wealth. The academic community weighed in challenging the data used to support the proposed legislation. Others suggested that new disclosure would be more appropriate and a less costly approach to address conflicts of interest. Industry participants and trade groups cited the proposal's overly broad scope, existing regulatory protections, and the SEC's lack of statutory authority to make these changes.

7. Volume-Based Exchange Transaction Pricing for NMS Stock

On October 18, 2023, the SEC [proposed Rule 6b-1](#) under the *Securities Exchange Act of 1934* to prohibit NSEs from offering volume-based transaction pricing in connection with the execution of agency-related orders in certain stocks. If exchanges offer such pricing for their members' proprietary orders, the proposal would require the exchanges to adopt

rules and written policies and procedures related to compliance with the prohibition, as well as disclose—monthly—certain information, including the total number of members that qualified for each volume tier during the month.

“Currently, the playing field upon which broker-dealers compete is unlevel,” said SEC Chair Gary Gensler. “Through volume-based transaction pricing, mid-sized and smaller broker-dealers effectively pay higher fees than larger brokers to trade on most exchanges. We have heard from a number of market participants that volume-based transaction pricing along with related market practices raise concerns about competition in the markets. I am pleased to support this proposal because it will elicit important public feedback on how the SEC can best promote competition amongst equity market participants.”

Seventy-eight letters were received with evenly divided opinions. Those who opposed the changes felt that the outcome would be de facto price setting and inconsistent with the proposed changes to Regulation NMS for tick size. Proponents of the proposal felt the change would improve market competition between exchanges and brokers. Individual investors generally supported the end of volume-based rebate tiers and felt that the SEC also should focus on the broader issue of payment for order flow.

D. 2022 & Earlier Outstanding Proposals

1. Regulation Best Execution

On December 15, 2022, the SEC issued a [proposal](#) updating Regulation Best Execution as follows:

- Establish a best execution standard for brokers, dealers, government securities brokers, government securities dealers, and municipal securities dealers, collectively “broker-dealers”
- Require broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to comply with the best execution standard
- Require more robust policies and procedures for broker-dealers that engage in certain conflicted transactions for or with a retail customer
- Require broker-dealers to review the execution quality of their customer transactions at least quarterly
- Exempt broker-dealers that qualify as “introducing brokers” from certain requirements if they establish, maintain, and enforce specified policies and procedures
- Require broker-dealers to review their best execution policies and procedures at least annually and present a report detailing the results of such reviews to their boards of directors or equivalent governing bodies

More than 2,250 comment letters were received, including four form letters, primarily from individual investors and investor advocacy groups that supported the changes. Asset managers and pension funds with high concentrations of retail activity supported the changes. They cited increased costs due to lack of price discovery from payment-for-order-flow arrangements. Not surprisingly, firms like Citadel that pay for order flow vehemently opposed the proposed changes. Industry participants, trade groups, and NYSE and NASDAQ generally supported the need for improvement to the existing “weak” FINRA rule but pushed back hard on the need for a massive overhaul of the equities market (four proposals) and suggested a sequential approach to market reform with adequate time to study the impacts of

each change. Several bond market participants cited potential unintended impacts on their market segment without editing changes to the proposal's scope.

2. Order Competition

The December 14, 2022 [proposed rule](#) would enhance competition for the execution of marketable orders of individual investors. The rule would require certain orders of individual investors to be exposed to competition in fair and open auctions before they could be executed internally by any trading center that restricts order-by-order competition.

This proposal received more than 3,600 comment letters, including several form letters. Most market participants felt the proposal as written would not achieve the SEC's intended goals and included significant areas for improvement. A slower approach to the overhaul of the equity market was a key theme.

3. Regulation NMS: Tick Size, Access Fees, & Odd-Lots

The [proposed rule](#) issued on December 14, 2022, would:

- Amend the minimum pricing increments (tick size) to establish a variable minimum pricing increment model that would apply to both the quoting and trading of national market system (NMS) stocks, which are stocks listed on an NSE, regardless of trading venue
- Reduce the access fee caps and require NSEs to make the amounts of all fees and rebates determinable at the time of execution
- Accelerate the implementation of the round-lot and odd-lot information definitions adopted in 2020 under the Market Data Infrastructure Rules and amend the odd-lot information definition to require the identification of the best odd-lot order

The SEC received almost 3,000 comment letters. Most respondents supported modernizing these rules with edits/modifications. Large pension funds supported these changes.

4. Order Execution Disclosures

The December 14, 2022 [proposal](#) would update disclosures required under Rule 605 of Regulation NMS as follows:

- Expand the scope of entities subject to Rule 605 by requiring broker-dealers that introduce or carry 100,000 or more customer accounts, single-dealer platforms, and entities that would operate qualified auctions to make available to the public monthly execution quality reports
- Amend the definition of "covered order" to include certain orders submitted outside of regular trading hours, orders submitted with stop prices, and nonexempt short sale orders
- Recategorize required information, including changing the order type categories and order size categories to include fractional share orders, odd-lot orders, and larger-sized orders
- Eliminate time-to-execution categories in favor of average time to execution, median time to execution, and 99th percentile time-to-execution statistics, each as measured in increments of a millisecond or finer
- Amend the information required to be reported under the rule, including changing the realized spread statistics to 15-second and one-minute realized spread and requiring new statistical measures of execution quality that could be used

to evaluate price improvement and size improvement for all order types, additional price improvement statistics for market and marketable order types, and certain statistical measures that could be used to measure execution quality of nonmarketable limit orders

- Enhance the accessibility of the required reports by requiring all entities subject to Rule 605 to make a summary report available

The proposal generated almost 800 responses. There was universal support for better disclosure in this area. Many suggested using CAT data to generate the information to improve consistency and reduce implementation and ongoing expenses.

5. Dealer & Government Securities Dealer Definition

On March 28, 2022, the SEC released a [proposal](#) that would require market participants, such as proprietary trading firms, that assume certain dealer-like roles and/or engage in certain levels of buying and selling government securities, to register with the SEC, become a member of a self-regulatory organization, and comply with federal securities laws and regulatory obligations. New rules would further define the phrase “as a part of a regular business” in the *Securities Exchange Act of 1934* to identify certain activities that would cause persons engaging in such activities to be “dealers” or “government securities dealers” and subject to the registration requirements.

- Rules 3a5-4 and 3a44-2 would set forth identical qualitative standards designed to identify market participants who assume certain dealer-like roles; in particular, those who function as market liquidity providers
- Rule 3a44-2 establishes a quantitative standard under which a person engaging in certain specified levels of activity would be deemed to be buying and selling government securities “as a part of a regular business,” regardless of whether it meets any of the proposal’s qualitative standards. No presumption shall arise that a person is not a dealer solely because that person does not engage in the activities identified in the proposed rules. The proposal does not address all circumstances when a person may be acting as a dealer or government securities dealer or replace otherwise applicable interpretations and precedent
- The proposal excludes any person who has or controls total assets of less than \$50 million and an investment company registered under the *Investment Company Act of 1940*

The SEC received 57 comments and feedback was negative overall. Fund industry groups felt the changes would have a negative effect on Treasury market liquidity, resiliency, and efficiency; the proposal exceeds the SEC statutory authority; and that the costs do not outweigh the benefits. T. Rowe Price and Citadel felt there were other, more efficient ways to address the SEC concerns.

6. ATSS – Exchange Definition (Rule 3b-16)

On January 26, 2022, the SEC reissued a [proposal](#), first issued in September 2020, to expand and modernize Rule 3b-16, which governs ATSS. ATSS are trading systems for securities that meet the exchange definition under federal securities laws but are not required to register with the SEC as an NSE if the ATS complies with certain exemption conditions. The proposal would make the following updates:

- Expand Regulation ATS for ATSS that trade government securities, NMS stock, and other securities
- Extend Regulation SCI to ATSS that trade government securities

- Amend the SEC exchange definition to include communication protocol systems

The initial proposal generated more than 300 responses. Most agreed with the first bullet point above. There was confusion over the application of Rule 15c2-11 to fixed income securities based on a no-action letter issued on September 24, 2021, and this ATS proposal. Much of the pushback concerned updating the “exchange” definition and a request for a definition of a communication protocol system. Blockchain and decentralized finance groups pushed back on SEC overreach in applying existing concepts to recent technology innovations.

On April 14, 2023, the SEC reopened the comment period. The reopening release reiterated the applicability of existing rules to platforms that trade crypto asset securities, including so-called “DeFi” systems, and provides supplemental information and economic analysis for systems that would be included in the new, proposed exchange definition. The reopening release also requested information and public comment on crypto asset securities trading on such systems and certain aspects of the proposed amendments applicable to all securities.

The SEC received an additional 2,000 comments on the re-exposure. Several comment letters cited the cost for smaller ATSs and a potential reduction in the number of firms.

7. NMS – Consolidated Audit Trail

Issued in August 2020, the [proposed amendments](#) would enhance the security of the CAT.

The proposal received 28 responses that soundly rejected collecting additional personally identifiable information data points and questioned the SEC’s authority to make such changes.

Conclusion

FORVIS delivers extensive experience and skilled professionals to assist with your objectives. Our proactive approach includes candid and open communication to help address your financial reporting needs. We help broker-dealers, bank holding companies and others across the capital markets with financial and nonfinancial regulatory reporting. From data origination through report remediation, we help solve clients’ complex regulatory reporting challenges. For more information, visit forvis.com.

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