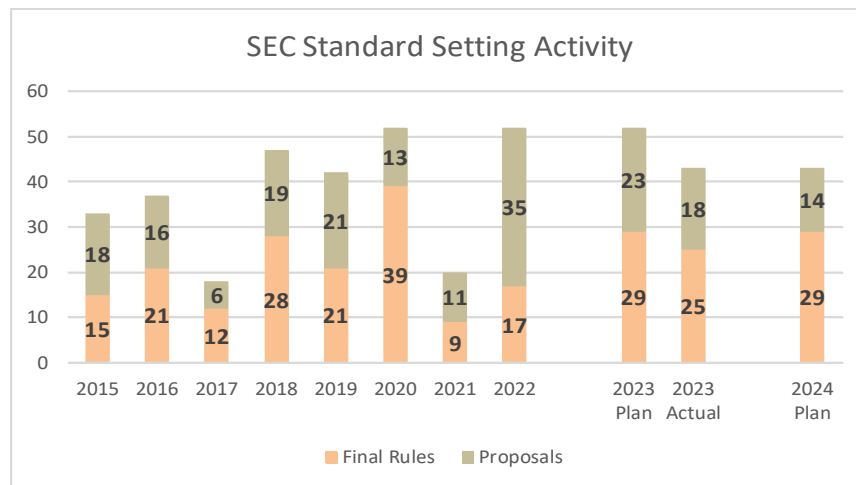


2024 SEC Outlook – Funds & Asset Managers

Asset managers and funds face a tidal wave 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 included in this update are intended to be a reminder of recently issued accounting and other guidance that may affect you in the current reporting period. This update is intended as general information and should not be relied upon as being definitive or all-inclusive.

A. Highlights

The SEC closed out the year by issuing six final rules in the fourth quarter, bringing the year-to-date total to 25 (including EDGAR and technical updates). This compares to 17 final rules issued in 2022 and 9 in 2021. Despite this scorching pace of standard setting, many of SEC Chair Gary Gensler’s high-priority proposals remain unfinalized. A spate of legal cases on both the SEC’s scope of authority and compliance with administrative rule-making procedures are winding through the court system and could have a significant impact on future rule setting, most notably for the planned climate disclosure rules. The SEC’s 2024 exam priorities for investment companies and broker-dealers notably dropped environmental, social, and governance (ESG) as a top concern.



Legal Challenges

Legal challenges continue on the SEC’s scope of authority and adherence to the administrative process in recent rule setting.

Share Repurchase

On May 3, 2023, the SEC issued a [final rule](#) updating and modernizing 2003 regulations on share repurchases by issuers, listed closed-end funds, and foreign private issuers. The U.S. Chamber of Commerce brought a legal challenge, and in October 2023, the U.S. Court of Appeals for the Fifth Circuit required the SEC to provide additional materials by November 30, 2023. On December 1, 2023, the SEC indefinitely postponed the effective date of the rule and on

December 19, 2023, the court vacated the rule. This is the first reform under Gensler’s term to be struck down in a lawsuit.

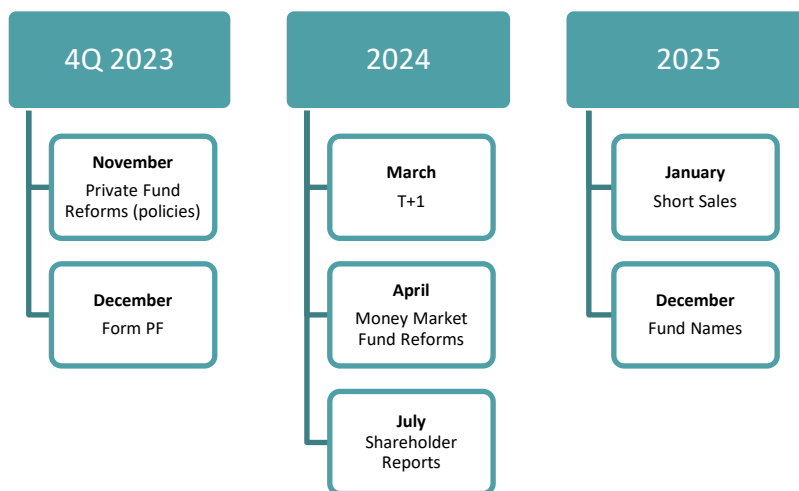
Regulatory Agenda

The fall reg flex agenda was published in the **Federal Register** in December and lists expected rulemaking priorities through April 2024. Most items have been carried forward from the spring 2023 agenda.

| Fall 2023 Reg Flex Agenda - Division of Investment Management | |
|---|--|
| Proposals | Final Rules |
| Fund fee disclosure & reform | Cybersecurity risk management |
| | ESG investment practices |
| | Outsourcing by investment advisers |
| | Form PF: Large private equity (PE) & liquidity fund advisers |
| | Safeguarding advisory client assets |
| | Consumer information privacy (Regulation S-P) |
| | Liquidity & swing pricing open-end funds |
| | Predictive data & conflicts of interest |
| | Exemption for internet investment advisers |

Additional details on the proposals related to these forthcoming final rules are included below.

B. Final Rules on the Horizon



1. Form PF Updates

On May 3, 2023, the SEC issued a [final rule](#) updating Form PF requirements for hedge fund and PE fund advisers as follows:

- Require large hedge fund advisers to report certain key events within 72 hours
- Require all PE fund advisers to report certain key events quarterly
- Require enhanced reporting by large PE fund advisers



Resource: [SEC Finalizes First Round of Form PF Updates](#)

2. Private Fund Reforms

On August 23, 2023, the SEC approved a [final rule](#) that significantly expands oversight, disclosure, and audit requirements for private funds.

SEC-registered private fund advisers must:

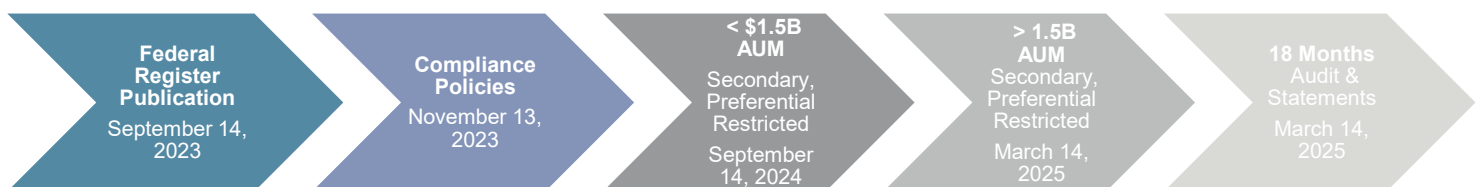
- Provide investors a quarterly statement with details on fund performance, fees, and expenses
- Obtain an annual audit for each private fund under the audit provisions of the custody rule
- Obtain a fairness opinion for adviser-led secondary transactions

All private fund advisers would be required to:

- Restrict certain activities without consent or disclosure
- Prohibit certain preferential treatment unless disclosed to current and prospective investors

All registered advisers, including those that do not advise private funds, must document the annual review of their compliance policies and procedures in writing.

Resource: [SEC Finalizes Extensive Private Fund Reforms](#)



3. Tailored Shareholder Reports & Advertising Rule Updates

In a rare unanimous vote, the SEC approved on October 20, 2022 a [final rule](#) with comprehensive changes to the mutual fund and exchange-traded fund (ETF) disclosure framework. The rule also updates advertising rules for registered investment companies (RICs) and business development companies (BDCs) to include certain standardized figures and

reasonably current information. The SEC’s Division of Investment Management recently prepared responses to [frequently asked questions](#) about this rule.

Resource: [New Fund Shareholder Report & Advertising Rules](#)



4. 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](#)

5. Money Market Fund (MMF) Reforms

On July 12, 2023, the SEC approved a [final rule](#) making significant updates to requirements for MMFs and large liquidity advisers. Highlights include:

- Increase minimum daily and weekly liquidity requirements to 25% and 50%
- Remove provisions on redemption gates and decouple the imposition of liquidity fees from a fund’s liquidity level
- In the most notable change from the proposal, the SEC backed away from swing pricing and instead will require institutional prime and tax-exempt MMFs to impose redemption fees. Nongovernment MMFs could impose a discretionary liquidity fee with board approval
- Additional reporting requirements for large liquidity fund advisers

- Specific guidance for a negative interest rate environment



Resource: [Sweeping Changes for Money Market Funds](#)

6. Short Sales

On October 13, 2023, the SEC voted three to two to create new Rule 13f-2 and update the consolidated audit trail (CAT) to increase market transparency on short activity on equity securities. Institutional investment managers will be required to 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](#)



7. Fund Name Rules

On September 20, 2023, the SEC voted four to one to issue a [final rule](#) updating the 20-year-old “Names Rule” to ensure that a fund’s name accurately reflects the fund’s investments and risks. Highlights of the rule include:

- Broadens the scope of the 80% investment policy requirement to cover an additional 2,200 funds. The new rule more clearly covers using “thematic” strategies—artificial intelligence, health and wellness, travel/tourism, or ESG funds.
- A fund must use a derivatives instrument’s notional amount for compliance with its 80% investment policy (excluding certain currency hedges).
- An unlisted registered closed-end fund or a BDC that is required to adopt an 80% investment policy cannot change its policy without a shareholder vote.
- A fund’s prospectus must include the definitions of terms used in its name, including the criteria used to select investments that each term describes.
- New quarterly reviews of investments are required for consistency with the 80% investment policy requirement and additional record-keeping.



C. 2023 Outstanding Proposals

1. Safeguarding Advisory Client Assets

On February 15, 2023, the SEC voted four to one to approve a [proposal](#) to significantly expand investor protection on advisory client assets. The proposal would:

- Expand the custody rule's scope to cover additional client assets and add discretionary authority as a custody activity
- Enhance the custodial protections for client assets
- Add new custody record-keeping and reporting requirements

If approved, the final rule would have staggered compliance dates depending on an adviser's regulatory assets under management (AUM). On August 23, 2023, the SEC reopened the comment period until October 30, 2023.

The SEC initially received almost 300 comment letters from advisers, custodians, industry groups, and individuals. Feedback was mixed; most cited significant costs to both custodians and advisers and especially smaller entities, difficulties and potential reduction in custodianship of certain assets (such as derivatives, annuities, repo agreements, and loans), and an increase in advisory costs shutting out smaller individual investors.

Several hundred additional comment letters were received with the vast majority criticizing the proposed changes. The Securities Industry and Financial Market Association's feedback was consistent with other industry participants. "Ultimately, if not significantly revised and subjected to additional review and comment, we believe that the Proposal likely would (i) significantly disrupt the operation of financial markets, (ii) restrict the ability of advisers to provide clients with investment advice for certain asset classes, (iii) limit the availability of custodial services, (iv) increase costs borne by investors, (v) result in fewer custodians for clients and advisers from which to choose, and (vi) negate the efforts and considerations taken in previous guidance issued by the SEC."

There also was strong pushback from crypto and decentralized finance (DeFi) market participants.

Resource: [Expansion of Adviser's Safeguarding & Custody Rules?](#)



2. 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.

3. 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 persons' 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 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.

4. Exemption for Internet Investment Advisers

Currently under Rule 203A-2(e), investment advisers are generally prohibited from registering with the SEC unless they either reach the \$100 million in AUM threshold, advise an RIC, or qualify for an SEC exemption. State security authorities regulate these firms. The Internet Advisers exemption permits SEC registration if advisory services are primarily through the internet, which is defined as fewer than 15 noninternet clients. This rule was last updated in 2002 and does not reflect evolutions in technology since then. The proposal narrowed the use of this exemption by:

- Requiring an investment adviser relying on the exemption to at all times have an operational interactive website through which the adviser provides investment advisory services on an ongoing basis to more than one client
- Eliminating the de minimis exception for noninternet clients. An internet investment adviser would be required to provide advice to all its clients exclusively through an operational interactive website

Ten 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.

5. Registration for Index-Linked Annuities

On September 29, 2023, the SEC issued a 420-page [proposal](#) that would update registration, disclosure, and advertising requirements for registered index-linked annuities (RILAs). New details to be included on an updated Form N-4 would

include RILA risks and features. If approved, RILA offerings would be handled more like variable annuity (VA) offerings. Other changes to Form N-4 would be applicable to all insurers that file that form. If approved, mandatory compliance with Form N-4 updates would start one year after a final rule is published in the **Federal Register**, although the new form could be used as soon as a final rule is adopted.

Resource: [SEC Changes Coming to Registered Annuities?](#)

D. 2022 Outstanding Proposals

1. Liquidity & Swing Pricing for Open-End Funds

On November 2, 2022, the SEC issued a 400+ page [proposal](#) that would significantly change liquidity risk management and pricing practices for open-end management investment companies:

- Update the classification of investment liquidity and require a minimum of 10% of highly liquid assets
- Require the use of swing pricing and implement a hard close
- Monthly, timelier, and more detailed public reporting of fund information

The changes would not apply to MMFs or certain ETFs. If adopted, the final rule would have a two-year compliance date for the swing rule changes and allow one year to implement the liquidity updates.

Resource: [Funds Face New Liquidity & Swing-Pricing Requirements](#)

More than 2,500 letters were received. Individual investors supported the amendments. Service providers, advisers, and adviser advocacy groups pushed back on the following points: overlap with existing fiduciary rules and pricing service rules in Rule 2a-5, implementation costs understated and prohibitive to smaller IAs, implementation time too short given scope of change, and other regulatory updates.

2. Outsourcing by Investment Advisers

On October 26, 2022, the SEC issued a [proposal](#) seeking feedback on new minimum due diligence and monitoring requirements for investment advisers who outsource certain covered services:

- Advisers must conduct due diligence before outsourcing and periodically monitor service providers' performance and reassess whether to retain them. Oversight must be documented and detailed information on service providers would be required on Form ADV
- Enhanced due diligence and monitoring will be required for third-party record-keepers

If approved, the compliance date would be 10 months from the rule's effective date.

Resource: [New Outsourcing Rules for Investment Advisers?](#)

Ninety letters were received. Individual investors supported the amendments. Service providers, advisers, and adviser advocacy groups pushed back on the following points: overlap with existing fiduciary rules and pricing service rules in Rule 2a-5; implementation costs understated and prohibitive to smaller IAs; implementation time too short given scope of change and other regulatory updates; scope clarification/exemptions for regulated banks; bank-affiliated RIAs,

qualified custodians, and index providers; potential cyberthreats from required vendor disclosure; and lack of jurisdiction over service providers.

3. Form PF Amendments

On August 10, 2022, the SEC issued a second set of [proposed](#) Form PF updates jointly with the Commodity Futures Trading Commission that covers private funds, commodity pool operators, and commodity trading advisors. Significant changes include:

- Section 1 and general instruction changes – Applicable to all Form PF filers
 - New details on advisers and the private funds they advise, including a breakout of digital assets
 - Reporting of complex structures
 - Enhanced reporting on hedge funds
- Section 2 changes – Applicable to large hedge fund advisers who advise qualifying hedge funds
 - Enhanced reporting
 - Removal of aggregate reporting

Resource: [SEC Proposes Second Set of Form PF Disclosure Updates](#)

4. ESG Disclosures for Investment Advisers & Investment Companies

On May 25, 2022, the SEC issued a 362-page [proposal](#) with new rules and disclosures to give investors consistent, comparable, and reliable information on funds' and advisers' use of ESG factors. The changes would apply to RICs and BDCs, collectively "funds," and RIAs and certain unregistered advisers, collectively "advisers." Highlights include:

- New disclosures on ESG strategies in fund prospectuses, annual reports, and adviser brochures
- Implementing a layered, tabular disclosure approach for ESG funds to allow investors to easily compare ESG funds
- Greenhouse gas (GHG) emissions disclosure would be required for certain environmentally focused funds for portfolio investments

Resource: [Investment Advisers & Companies Face New ESG Disclosures](#)

Almost 200 comment letters were received. There was universal support for consistent standards. Investor groups supported the changes while investment funds and industry groups suggested improvements to address the vagueness of the terms, materiality consideration, consistency with global standards, and application to fixed income funds. Commenters challenged the three required buckets, primarily the ESG integration category. The energy and timber sectors felt these rules could negatively impact fund investments held. NASDAQ noted the rule could disincentivize funds and advisers from considering ESG investment strategies. The Forum for Sustainable and Responsible Investment noted, "Some aspects of the Proposal do not align with real-world fund investment approaches or investor informational needs." Several respondents, including the Securities Industry and Financial Markets Association and the attorneys general from several states, cited *West Virginia v. EPA*. Others urge a final rule on ESG reporting before these changes to investment advisers.

5. Cybersecurity – Investment Advisers

On February 9, 2022, the SEC [proposed](#) new rules to enhance cybersecurity preparedness and improve the resilience of investment advisers and investment companies against cybersecurity threats and attacks as follows:

- Require advisers and funds to adopt and implement written policies and procedures reasonably designed to address cybersecurity risks
- Require advisers to report significant cybersecurity incidents to the SEC on proposed Form ADV-C within 48 hours
- Enhance adviser and fund disclosures related to cybersecurity risks and incidents
- Require advisers and funds to maintain, make, and retain certain cybersecurity-related books and records

Seventeen comment letters were received at the end of the first comment period. Feedback mirrored comments on the registrant's cyber proposal above. Several funds requested more flexibility in implementing any new cyber rules, especially smaller funds. Many felt that administratively, cyber rule setting should not be under the anti-fraud provisions, but rather under the general rulemaking authority. After the second reopened comment period, an additional 84 comment letters were received. According to the [Investment Adviser Association](#), "The Commission has severely underestimated the costs of the Adviser Proposals – both in isolation and on a cumulative basis – for all advisers, and especially for smaller advisers. At the same time, it has, in our view, overestimated the potential benefits, and we are concerned that the Adviser Proposals collectively will harm rather than further the Commission's stated goals. ... Before taking final action on the Adviser Proposals, seek public feedback on a comprehensive implementation timeline for tiered and staggered compliance requirements and dates for all these proposals." Most industry participants felt 48 hours was too short for reporting and most requested an extended implementation period.

Conclusion

The asset management team at **FORVIS** has more than 50 years of experience providing accounting, tax, and consulting services to various types of investment holdings, including conventional debt and equity investments, loans, businesses, alternative investments, and other unique assets. As of June 2023, Convergence Optimal Performance ranked FORVIS as a top 20 accounting and audit firm to RIAs. FORVIS also was ranked in the top 20 by AUM. We have experience providing services to funds ranging from emerging managers to \$100-plus billion in AUM. Our knowledge allows us to provide tailored services to help meet your unique needs. We provide services to private, public, and Cayman funds. For more information, visit forvis.com.

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