



# Impactful Recent U.S. Regulatory Matters for Asset Managers

May 2024

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## Impactful Pending Regulatory Proposals (Anticipated Time for Finalization in Brackets)

*In order of timing*



1. **ESG disclosures for funds and investment advisers (final rule expected Q1-Q2 2024)**
  - Would impose a framework under which registered funds are classified based on the level of ESG considerations incorporated into investment strategies (Integration Funds, ESG-Focused Funds and Impact Funds), with associated required disclosures based on the classification.
  - Timing of final rule could be impacted by judicial stay of SEC public company climate disclosure rule.
2. **Open-end fund liquidity risk management reforms and swing pricing requirement (final rule expected Q1-Q2 2024)**
  - Would create a swing pricing and hard close requirement for open-end funds (except money market funds and ETFs).
  - Would impose more restrictive liquidity risk management program requirements for mutual funds and ETFs under Rule 22e-4 under Investment Company Act and remove the "less liquid investment" classification, leading to investments in this category being deemed illiquid investments.
  - Bank loans would be deemed illiquid investments, meaning a fund could not hold more than 15% of net assets in bank loans.
3. **Cybersecurity Risk Management Rules for Investment Companies and Investment Advisers and for Broker-Dealers and Transfer Agents (final rule expected Q1-Q2 2024)**
  - Two separate rule proposals (one for registered funds and investment advisers, the other for broker-dealers and transfer agents) that would require adoption and implementation of policies and procedures that are reasonably designed to address cybersecurity risks.
  - Regulated entities would need to give the SEC notice of a significant cybersecurity incident.
4. **Equity market structure reforms (final rule Q1-Q2 2024)**
  - Amendments would make significant changes to Reg. NMS targeting payment for order flow, but also include other changes to Reg. NMS including modifying minimum tick sizes for U.S. listed equities to less than \$.01.
  - The least controversial rule amendment within the broader proposed reforms (Rule 605 under Exchange Act) was adopted by SEC in early March 2024.
5. **Oversight Requirements for Certain Services Outsourced by Investment Advisers (final rule expected Q1-Q2 2024)**
  - Would establish minimum and consistent oversight and due diligence requirements for investment advisers outsourcing a "covered function" to a service provider.
  - A "covered function" is a function/service that: (i) is necessary to provide advisory services in compliance with the U.S. federal securities laws and (ii) if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services.
6. **Investment Adviser Custody/Safekeeping Rule (TBD)**
  - Would fundamentally expand and change the scope and requirements of the custody rule, with implications for traditional custody models.
  - Would significantly expand assets covered by custody rule and require safekeeping of any client assets over which an adviser has custody, including cryptocurrencies, derivatives, loans, and real estate.
  - Would extend the definition of custody to include all discretionary accounts where an adviser has authority to trade client assets and require advisers to obtain certain assurances from qualified custodians regarding custodial protections.
  - Recent speculation that SEC will repropose.
7. **Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker Dealers and Investment Advisers (TBD)**
  - Would require broker-dealers and investment advisers to eliminate, or neutralize the effect of, certain conflicts of interest associated with interactions with investors through use of covered technologies.
  - "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 or outcomes of an investor.
  - Recent speculation that SEC will repropose.



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## Regulatory Change in Implementation (Compliance/Effective Date in Brackets)



1. **Streamlined Shareholder Reports for Mutual Funds and ETFs (July 24, 2024)**
  - Rule, Form N-1A and Form N-CSR amendments designed to streamline/modernize shareholder reports for mutual funds and ETFs.
  - Significantly changes the design of shareholder reports for mutual funds and ETFs, including by requiring that individual reports be prepared for each share class of a single fund.
  - These funds are prohibited from relying on Rule 30e-3 under Investment Company Act to satisfy shareholder report transmission requirements through online delivery.
  - Amendments also include a new definition of "appropriate broad-based securities market index" for purposes of fund prospectuses and shareholder reports, which will require a fund to compare its performance to the applicable overall securities market in its annual reports and prospectus.
2. **Investment Company Advertising Rules Amendments (July 24, 2024)**
  - Amendments to Rules 482 and 433 under Securities Act and Rule 34b-1 under Investment Company Act to require that investment company advertisements providing fee or expense disclosures include certain standardized fee and expense figures, and that these figures adhere to certain prominence and timeliness requirements.
  - Amendments to Rule 156 under Securities Act to address statements and representations about a fund's fees and expenses that could be materially misleading.
3. **Enhanced Reporting of Proxy Votes by Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (Form N-PX reports on and after August 31, 2024)**
  - Amendments to Form N-PX designed to enhance registered fund disclosures regarding proxy votes.
  - Require that (i) each vote be categorized into one of 14 standard categories; (ii) funds use the same language as the issuer's proxy card to identify matters voted; (iii) funds disclose the number of shares loaned but not recalled and thus not voted; and (iv) filings use XML structured data language.
  - Institutional investment managers must provide disclosure of "Say on Pay" votes on Form N-PX (joint reporting with registered funds permitted in certain cases).
4. **Shortening the Securities Settlement Cycle to T+1 (May 28, 2024)**
  - Amendments to Rule 15c6-1 under Exchange Act to shorten the standard settlement cycle for most routine securities trades from two business days to one business day after the trade date (i.e., "T+2" to "T+1").
  - Amendments to Rule 204-2 under Advisers Act to require investment advisers to make and keep records of confirmations and time- and date-stamped allocations and affirmations with respect to transactions that are subject to the requirements of Rule 15c6-2(a).
5. **Money Market Fund Reform (Phased implementation beginning in October 2023)**
  - Amendments to Rule 2a-7 under Investment Company Act and regulatory reporting forms for money market funds to further improve the resilience and transparency of money market funds.
  - Amendments to Rule 2a-7: (i) remove redemption gates and the tie between weekly liquid asset levels and liquidity fee requirements; (ii) impose increased liquidity requirements for all money market funds; (iii) impose mandatory liquidity fees for institutional prime and institutional tax-exempt money market funds when daily net redemptions exceed 5% of net assets; (iv) require non-government money market funds to apply a discretionary liquidity fee if liquidity fee is determined to be in best interests of the money market funds; (v) provide stable net asset value money market funds the ability to reduce the number of shares outstanding to seek to maintain a stable net asset value per share when interest rates are negative; and (vi) modify stress testing requirements.

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6. **Private Fund Adviser Rules (September 14, 2024 and March 14, 2025) (subject to pending challenge in Fifth Circuit)**
  - New and amended rules under Advisers Act that impose substantial requirements on investment advisers to private funds.
  - Quarterly statements rule requires a registered adviser to prepare a quarterly statement for each private fund that includes performance and fee and expense information (the substance of which will depend on whether the fund is a "liquid fund" or an "illiquid fund").
  - Audit rule requires a registered adviser to obtain audited financial statements of each private fund it advises, in accordance with the audit and delivery provisions in Rule 206(4)-2 under Advisers Act.
  - Under restricted activities rule all private fund advisers are restricted from engaging in certain practices with respect to advised private funds, unless they meet prescribed disclosure requirements, and in some cases receive investor consent.
  - Preferential treatment rule prohibits all private fund advisers from providing preferential liquidity terms or portfolio holdings/investment exposure information to a subset of investors, with certain limited exceptions. Other preferential treatment can be afforded only with written disclosures of such preferential treatment to prospective and current fund investors.
7. **Amendments to Beneficial Ownership Reporting on Schedules 13D and 13G (September 30, 2024 for revised Schedule 13G filing deadlines)**
  - Amendments to Regulation 13D-G under Exchange Act governing beneficial ownership reporting.
  - For Schedule 13D, amendments shorten the initial filing deadline from 10 days to 5 business days and require that amendments be filed within 2 business days.
  - For qualified institutional investors (QIIs) filing Schedule 13G, amendments shorten the initial filing deadline from 45 days after the end of the calendar year to 45 days after the end of the calendar quarter in which the investor becomes beneficial owner of more than 5% of the covered securities.
  - For QII Schedule 13G filers, amendments generally require that a Schedule 13G amendment be filed 45 days after the calendar quarter in which a material change occurs (rather than 45 days after the calendar year) and accelerate the Schedule 13G amendment obligation when beneficial ownership exceeds 10% or increases or decreases by 5%.
8. **Amendments to Registered Fund Names Rule (December 11, 2025)**
  - Amendments to Rule 35d-1 under Investment Company Act and related forms and disclosure requirements to modernize and enhance the "names rule".
  - Expand the 80% investment policy requirement to include fund names with terms suggesting a focus in investments that have, or whose issuers have, "particular characteristics" (including "growth," "value" and terms indicating incorporation of ESG factors).
  - Funds must comply with the 80% investment policy "under normal circumstances", apply the policy requirement at the time of investment acquisition and review investment classifications quarterly to determine compliance. A fund that deviates from its 80% policy must regain compliance generally within 90 days.
  - Funds also required to calculate "assets" for names rule purposes by valuing derivatives, generally using notional amounts.
  - Funds must include additional prospectus disclosure to define terms used in name, including related investment criteria for selecting investments described by name.
9. **Reporting of Securities Loans - Exchange Act Rule 10c-1a (January 2, 2026) (subject to pending challenge in Fifth Circuit)**
  - Implements a comprehensive reporting regime with respect to securities lending transactions in the United States.
  - Lending agents are required to report securities loans of "reportable securities" (generally any U.S. equity security and any debt security subject to TRACE reporting) to FINRA by the end of the day that the loan is effected or modified, and FINRA is required to make certain information public no later than the morning of the next business day.
  - Reportable terms include: (i) legal name of the issuer; (ii) ticker; (iii) time and date of loan; (iv) amount of securities loaned; (v) rates, fees, charges and rebates for the loan; (vi) type of collateral and percentage of collateral to the value of the loan; (vii) termination date; and (viii) borrower type.

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## Regulatory Change in Implementation (Compliance/Effective Date in Brackets)



### 10. Reporting by Institutional Investment Managers Regarding Short Position Information (January 2, 2025) (subject to pending challenge in Fifth Circuit)

- New Rule 13f-2 under Exchange Act requires reporting of short sale positions in equity securities by institutional investment managers.
- Institutional investment manager must file a Form SHO through EDGAR within 14 calendar days after the end of each calendar month with respect to equity securities over which the manager and all accounts over which the manager (or any person under the Manager's control) has investment discretion maintain short exposure that meets or exceeds prescribed reporting thresholds.
- For each reported equity security, manager is required to report on Form SHO information including: (i) manager's end-of-month gross short position and (ii) for each trading day during the calendar month, manager's net activity in the reported equity security, including activity in derivatives.
- SEC will publish through EDGAR, on a delayed basis, certain aggregated short sale related information regarding each equity security reported by institutional investment managers on Form SHO.

### 11. DOL Fiduciary Rule (September 23, 2024)

- Updates the definition of an "investment advice fiduciary" under ERISA by eliminating longstanding "five-part test" and replaces it with a substantially broader test.
- Will subject more parties to the stringent fiduciary standards under ERISA with respect to retirement investors, and to the prohibited transaction rules under ERISA and Section 4975 of Internal Revenue Code, including with respect to the receipt of compensation for providing such advice.
- "Retirement investor" includes plans, plan participants, beneficiaries, IRAs, IRA owners and beneficiaries and plan fiduciaries with discretionary authority.
- Also includes amendments to certain related prohibited transaction class exemptions (PTCEs) (75-1, 77-4, 80-83, 83-1 and 86-128), generally to eliminate coverage of compensation arising from fiduciary investment advice.