GODFREY & KAHN

April 2023

Investment Management Legal and Regulatory Update

Godfrey & Kahn Investment Management Team Members Responsible for this Update:

Emily R. Enslow
414.287.9366
eenslow@gklaw.com

Carol A. Gehl
414.287.9255
cagehl@gklaw.com

Susan M. Hoaglund
262.951.7136
shoaglun@gklaw.com

Emma L. Janicki
414.287.9253
ejanicki@gklaw.com

Pamela M. Krill
608.284.2226
pkrill@gklaw.com

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LATEST DEVELOPMENTS

SEC Publishes 2023 Examination Priorities

The SEC's Division of Examinations (Division) released its 2023 examination priorities on February 7, 2023. The report noted the uncertainty and instability in the markets and beyond over the last several years, including market volatility, inflation, cyber threats, geopolitical instability, and crypto asset challenges. In a message from the leadership team, the report highlighted the Division's four pillars: 1) promote compliance; 2) prevent fraud; 3) monitor risk; and 4) inform policy. The report included examples of how the staff worked to uphold each pillar in 2022, such as the use of risk alerts and proactive work on examinations.

The report included metrics about the Division's examination program. It noted that in the 2022 fiscal year, the staff examined 15% of registered investment advisers, noting there are more than 15,000 advisers industry-wide that oversee more than $125 trillion in assets under management. In the broker-dealer space, the staff and FINRA partnered together to examine nearly half of the approximately 3,500 registered broker-dealers, with the staff completing 360 of those examinations.

The 2023 priorities are grouped into the following ten categories, some of which are discussed in more detail below:

1. Notable New and Significant Areas of Focus
2. Information Security and Operational Resiliency
3. Crypto Assets and Emerging Financial Technology
4. Investment Advisers and Investment Companies
5. Broker-Dealer and Exchange Examination Program
6. Clearance and Settlement
7. Regulation Systems Compliance and Integrity
8. FINRA and MSRB (Municipal Securities Rulemaking Board)
9. Anti-Money Laundering
10. LIBOR

Notable New and Significant Areas of Focus

New Rules. The Division will focus on the implementation of recent new rules as part of their examination priorities. Specifically, the staff will be reviewing compliance with new Rule 206(4)-1 under the Advisers Act (marketing rule), Rule 18f-4 under the Investment Company Act (derivatives rule), and Rule 2a-5 under the Investment Company Act (fair valuation rule).

Marketing Rule. The Division remarked that "the new marketing rule is a significant change to a core examination review area for registered investment advisers." The staff will examine if advisers have adopted and implemented policies and procedures to prevent violations of the rule. They also will review whether advisers "have a reasonable basis for believing they will be able to substantiate material statements of fact and requirements for performance advertising, testimonials, endorsements and third-party ratings."

Derivatives Rule. For funds relying on the rule, the staff will be reviewing all areas of compliance with the rule, such as adoption of a derivatives risk management program, board oversight and the accuracy of a fund's disclosure with regard to derivatives investing.

Fair Valuation Rule. The staff will focus on implementation of the rule, including how firms have changed their policies and procedures to incorporate the new fair value requirements, designating the valuation designee, board oversight, and reporting and recordkeeping.

Advisers to Private Funds. The Division plans to focus on advisers to private funds, specifically, conflicts of interest, how fees and expenses are allocated, compliance with the new marketing rule (including performance advertising and compensated testimonials and endorsements), use of alternative data, and custody rule compliance. The report highlights private funds that are: highly leveraged, managed alongside business development companies, have affiliate involvement, or invest in crypto, commercial real estate, or special purpose acquisition companies as being special areas of focus.

Standards of Conduct; Form CRS. The Division will continue to examine advisers and broker-dealers regarding applicable standards of conduct in terms of investment advice and recommendations of investment strategies, account types and certain products (notably, complex, high cost, proprietary or unconventional products), and how best interest determinations are made. The Division notes that "all broker-dealers and investment advisers have at least some conflicts of interest with retail investors" and they will focus on conflict-of-interest disclosures. In addition, the Division intends to examine client agreements for hedge clauses. Finally, the Division will be enforcing compliance with Form CRS.

ESG Investing. The Division will continue its focus on ESG-related advisory services and fund offerings and confirm funds are operating in the manner disclosed, the products are appropriately labeled and that recommendations are made in investors' best interest.

Information Security and Operational Resiliency

The report notes that cybersecurity risks remain elevated and that the staff will focus on policies and procedures to prevent ransomware attacks, comply with Regulations S-P and S-ID, where applicable, and safeguard data. The staff will also be examining any unauthorized use of customer data by third-party vendors.

Crypto Assets and Emerging Financial Technology

With regard to crypto, the report states that the Division "will focus on the offer, sale, or recommendation of, advice regarding and trading in crypto or crypto-related assets," including standards of care in product recommendations and compliance, disclosure and risk management practices. The Division will also focus on new or never examined advisers and broker-dealers that offer crypto or crypto-related products. The report also discusses digital engagement practices, which the staff defines as "tools with behavioral prompts, differential marketing, game-like features (commonly referred to as gamification), and other design elements or features designed to engage with retail investors on digital platforms (e.g., websites, portals, and applications), as well as the analytical and technological tools and methods." With regard to digital engagement practices, exams will assess how recommendations are being made, if representations are fair and accurate, operations and controls in place and how risks are evaluated.

Investment Advisers and Investment Companies

The report states adviser exams may cover the following areas:

- custody and safekeeping of client assets
- valuation
- portfolio management
- brokerage and execution
- conflicts
- compliance issues
- fee calculation and excessive fees
- revenue streams
- retaining and monitoring electronic communications
- selecting and using third-party service providers

The report states fund exams may cover the following areas:

- fiduciary obligations of advisers
- boards' processes for assessing and approving advisory and other fund fees (particularly for funds with weaker performance relative to their peers)
- derivatives and liquidity risk management programs
- turnkey funds
- mutual fund to ETF conversions
- non-transparent ETFs
- loan-focused funds
- medium and small fund complexes with high staff turnover
- volatility-linked and single-stock ETFs

Broker Dealer and Exchange Examination Program

The Division will continue to focus on broker-dealer compliance and supervisory programs, including electronic communications related to the firm's business, recordkeeping of electronic communications, credit, market and liquidity risk management, conflicts of interest in order routing and execution, and trading practices. The report also highlights the staff's focus on issues related to municipal and fixed income securities (such as pricing, confirmation disclosure requirements and dealer and underwriting obligations) and issues related to over-the-counter and microcap securities.

Anti-Money Laundering

The report notes that due to the current geopolitical environment and the increased imposition of international sanctions, there is a renewed focus on examining AML programs and ensuring that policies and procedures are in place to identify suspicious activity and illegal money-laundering activities.

LIBOR

The Division will continue to assess broker-dealer and adviser preparedness for the discontinuation of LIBOR in mid-2023.

Sources: SEC Division of Examinations Announces 2023 Priorities (Feb. 7, 2023), available here; Division of Examinations, 2023 Examination Priorities, available here.

LATEST DEVELOPMENTS: ADVISERS

SEC Proposes Changes to the Custody Rule

On February 15, 2023, the SEC, in a 4-1 vote, proposed to amend and redesignate Rule 206(4)-2 under the Advisers Act (the current custody rule) as new Rule 223-1 under the Advisers Act (the proposed safeguarding rule). The custody rule has not been amended since 2009. The proposal cites changes in "technology, advisory services and custodial practices" that have led to the need for amendments to the rule in order to ensure client assets are protected.

As proposed, the rule would significantly expand the custody requirements for assets held in a client account, including not only for securities but also crypto assets, financial contracts held for investment purposes, collateral posted in connection with swap contracts, physical assets (e.g., artwork), physical commodities (e.g., wheat or lumber) and negative cash. Also, under the safeguarding rule, "custody" would include an adviser's discretionary trading authority. However, under the proposed rule, there are still exceptions to the surprise examination requirement.

Qualified Custodian Protections

Under the proposed safeguarding rule, to provide reliable investor protections, entities (i.e., banks, broker-dealers, certain foreign financial institutions, etc.) can act as qualified custodians, maintaining possession or control of client assets, only pursuant to a written agreement between the qualified custodian and the adviser.

Under the proposed rule, the agreement must include certain required provisions, including an agreement by the qualified custodian that it will provide records, account statements, and an annual written internal control report (that would include an opinion of an independent public accountant). The agreement must also address the adviser's authority to transact on behalf of the client account, and include reasonable assurances from the qualified custodian related to its standard of care, indemnification of clients against losses, and segregation of client assets.

Assets Unable to be Maintained with a Qualified Custodian

The proposed rule acknowledges that some physical assets (e.g., precious metals, physical commodities, and real estate) and certain privately offered securities are not able to be held by a qualified custodian. Securities would only be considered "privately offered" if they are not acquired through a public offering, uncertificated and transferable only with the consent of the issuer or holders. In the rule proposal, the SEC specifically states that crypto assets would not qualify as privately offered securities.

Under the current custody rule, there is an exception from the requirement that client assets be maintained by a qualified custodian if the assets consist of privately offered securities. Under the proposed safeguarding rule, there would still be an exception for privately offered securities as long as certain conditions are met. For example, if the adviser makes a reasonable determination that the asset cannot be maintained by a qualified custodian and the adviser itself is able to safeguard the asset, a qualified custodian is not required to hold the asset. If an adviser relies on the exception under the proposed rule, the adviser would need to have a written agreement with an independent public accountant wherein the adviser would notify the accountant "of any purchase, sale, or other transfer of beneficial ownership of such assets within one business day" and the accountant would have to verify the transaction. Additionally, the accountant would have to notify the SEC within one business day if the accountant became aware of any "material discrepancies." Lastly, advisers relying on the exception for maintaining assets with a qualified custodian would still be subject to a surprise examination unless they rely on an exception from the surprise examination requirements.

Segregation of Client Assets

In situations when an adviser has custody over client assets, the proposed safeguarding rule would require an adviser to segregate those assets by titling or registering them in the client's name or for their benefit, not commingling assets, and not subjecting client assets to any claim in favor of the adviser (except if agreed to by the client). These proposed requirements would ensure client assets are protected if they are not maintained by a qualified custodian.

Adviser Delivery of Notice to Clients

Both the current custody rule and the proposed safeguarding rule require an adviser to notify its clients upon opening a new account with a qualified custodian. However, the safeguarding rule proposes the notice would also include the custodial account number and be sent to all investors in pooled investment vehicles.

Amendments to the Surprise Examination Requirement

Under the current custody rule, advisers with custody of client assets are subject to an annual surprise examination by an independent public accountant. Like the custody rule, the proposed safeguarding rule would also require an agreement between the accountant and the adviser. However, the proposed rule also requires that the adviser have a "reasonable belief" that the written agreement has been implemented and that the surprise examination will occur, in order to ensure the examination requirement will be met.

Exceptions from the Surprise Examination

The proposal acknowledges the expanded definition of assets that must be custodied and contemplates exceptions to the surprise audit requirement. Under the current custody rule, an adviser who has custody of the assets in a pooled investment vehicle can avoid the surprise audit of the pool, provided the adviser delivers audited financials to the investors in the pool within specified timeframes following the pool's fiscal year end. Under the proposed rule, an adviser would still be able to rely on the audit exception, however, instead of limiting this exception to pooled investment vehicles only, an adviser could rely on the exception for any client entity whose financial statements can be audited (*e.g.*, limited partnerships, limited liability companies, any other type of pooled investment vehicle or any other entity). The safeguarding rule also contains an exception from the surprise audit requirement for advisers who only have custody of a client's assets based on discretionary authority or because of a standing letter of authorization.

Recordkeeping Amendments

The safeguarding rule proposes to amend Rule 204-2 (the books and records rule) to require recordkeeping of written notices to clients, client account records, client account statements, transaction and position information, standing letters of authorization, and records related to independent public accountant engagements.

Changes to Form ADV

The safeguarding rule contains proposed amendments to Form ADV that would require advisers to provide more custody-related information, including if advisers have custody of client assets, specific information regarding those assets, qualified custodian information and if the adviser relies on any exceptions to the safeguarding rule.

The comment period for the proposal closes on May 8, 2023.

Sources: SEC Proposes Enhanced Safeguarding Rule for Registered Investment Advisers, SEC Press Release 2023-30 (Feb. 15, 2023), available here; Safeguarding Advisory Client Assets, Release No. IA-6240 (Feb. 15, 2023), available here; Proposed Safeguarding Rule, SEC Fact Sheet, available here.

SEC Proposes Enhancements to Regulation S-P

On March 15, 2023, the SEC proposed enhancements to Regulation S-P, the regulation protecting privacy of consumer financial information. The proposed amendments would strengthen protections of customer information by requiring broker-dealers, investment companies, advisers and transfer agents (collectively, covered institutions) to adopt a reasonably designed "incident response program" to reduce the potential harm to individuals whose sensitive information is affected by a data breach. The proposed amendments would also broaden the scope of information covered by Regulation S-P and require covered institutions to maintain written records documenting compliance with the proposed amended rules.

The Regulation S-P amendments focus on two provisions that have become outdated due in large part to technological advancements that have changed how firms obtain, store and share individuals' personal nonpublic information. Rule 248.30(a), the safeguards rule, currently requires broker-dealers, investment companies and advisers to adopt written policies and procedures for administrative, technical, and physical safeguards to protect customer records and information. Rule 248.30(b), the disposal rule, currently requires proper disposal of consumer report information by

transfer agents and those covered by the safeguards rule. The increased risk of harm to individuals whose information is used by covered institutions has prompted the SEC to propose the following amendments.

Incident Response Program

The proposed amendments to the safeguards rule would require covered institutions to adopt an incident response program – a set of written policies and procedures designed to "detect, respond to and recover from unauthorized access to or use of consumer information." While the proposed amendments do not explicitly state specific steps a covered institution must take when responding to an incident, they would require specific "general elements" to appear in the policies and procedures that the covered institution could then implement based on its individual facts and circumstances. The SEC believes this allows for greater flexibility and tailoring of the incident response program while still providing broad protection to customer information.

In particular, a covered institution's incident response program would be required to have written policies and procedures to:

(i) assess the nature and scope of any incident and identify the customer information that may have been accessed or used without authorization;

(ii) take appropriate steps to contain and control the incident; and

(iii) notify each affected individual (unless the covered institution determines that the sensitive customer information is not likely to cause substantial harm or inconvenience to the customer).

The SEC believes that the incident response program would prompt covered institutions to undertake more advanced planning, thereby improving preparedness as well as effective, consistent and systematic responses to data breaches. Notably, the amendments would also require a written contract between covered institutions and service providers that would compel service providers to also take measures to protect customer identification and to notify the covered institution within 48 hours of a breach.

Notification Obligations

All 50 states have enacted varying laws requiring notification of breaches of customer information; however, the proposed rule would set a federal minimum standard of notification. Under the proposed rule, the required notice to customers must (i) be clear and conspicuous, (ii) be provided as soon as practicable (but not later than 30 days) after the covered institution becomes aware that a breach of customer information has occurred, or is reasonably likely to have occurred, and (iii) contain key information about the incident, including the nature of the breached data, what the covered institution has done to prevent further unauthorized access or use, and how the affected individual could respond to the breach to protect themselves.

Scope of Information Protected under the Safeguards Rule and Disposal Rule

The SEC's proposed amendments would also expand and more closely align the information covered by the safeguards rule and the disposal rule by applying the protections of both rules to "customer information," a newly defined term.

The new term, customer information, would be defined to mean "any record containing 'nonpublic personal information' (as defined in Regulation S-P) about a customer of a financial institution, whether in paper, electronic or other form that is handled or maintained by the covered institution or on its behalf." This new term would replace "customer records and information" in the safeguards rule and it would be added to the coverage of the disposal rule.

Additionally, the information covered under both rules would expand to include nonpublic personal information that a covered institution receives from a third-party financial institution about a financial institution's customers, in addition to the information it collects about its own customers. Further, the amendments to the safeguards rule and disposal rule would also be applicable to transfer agents.

Sources: SEC Proposes Changes to Reg S-P to Enhance Protection of Customer Information, SEC Press Release 2023-51 (Mar. 15, 2023), available here; Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information, Release No. IA-6262 (Mar. 15, 2023), available here; Proposed Enhancements to Regulation S-P, SEC Fact Sheet, available here.

SEC Risk Alert Highlights Deficiencies in Regulation Best Interest Compliance

On January 30, 2023, the Division published a risk alert to share observations from broker-dealer examinations regarding compliance with Regulation Best Interest, highlight deficiencies and give examples of weak practices that could result in deficiencies.

Compliance Obligation

The compliance obligation under Regulation Best Interest requires broker-dealers to establish written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest. The Division staff noted that many broker-dealers had generic written policies and procedures that were not tailored to the firm or simply restated Regulation Best Interest's requirements. Specifically, the Division staff observed policies and procedures that:

- Did not identify parties responsible for updating disclosures when they were outdated or incomplete or specify a process to deliver updated disclosures and document delivery;
- Lacked guidance for financial professionals on how to consider costs or alternative investments when making a recommendation and failed to explain when documenting the basis for their recommendations is necessary;
- Created systems to evaluate costs or alternatives, but did not mandate their use;
- Did not update their surveillance systems with respect to new obligations regarding rollover or account recommendations;
- Relied on documents maintained in branch offices so reviews could only happen during branch examinations; and
- Relied on surveillance systems that only captured executed transactions and did not include recommendations rejected by retail customers.

The Division staff also noted that some employee training did not address specific firm policies and procedures on Regulation Best Interest.

Conflict of Interest Obligation

The Division staff observed deficiencies related to the requirement that broker-dealers have written policies and procedures reasonably designed to address conflicts of interest, including policies and procedures that:

- Failed to assign responsibility to identify and address conflicts to a conflicts committee, conflicts officer or a unit within compliance;
- Did not prohibit sales contests, sales quotas, bonuses, and non-cash compensation that were based on the sales of specific securities or specific types of securities within a limited period of time;
- Failed to reflect all conflicts of interest; and
- Failed to mitigate (i.e., modify practices to reasonably reduce) conflicts of interest at the financial professional level.

Disclosure Obligation

The Division staff noted that some broker-dealers only posted their Regulation Best Interest disclosures on their website or referenced them in Form CRS, which does not satisfy their obligation to deliver the required disclosures. In addition, the Division staff observed instances where a dually-registered financial professional failed to disclose the capacity in which they were acting (i.e., either as a broker-dealer agent or investment adviser representative) to a retail customer prior to or at the time of the recommendation. Finally, the Division staff noted some firms instructed their financial professionals to disclose the differences in capacity orally, but failed to provide guidance regarding how to maintain a record that the disclosures were made.

Source: Observations from Broker-Dealer Examinations Related to Regulation Best Interest (Jan. 30, 2023), available here.

Reminder: Wisconsin Continuing Education Requirements in Effect for 2023 for Investment Adviser Representatives

With the 2023 calendar year, the Wisconsin Department of Financial Institutions (DFI) Division of Securities Rule 11.02 is in effect. The rule requires every Wisconsin-registered investment adviser representative (IAR) to complete 12 continuing education credits annually (IAR CE). The requirements include at least six credits of products and practices courses and six credits of ethics and professional responsibility courses. IARs that are dually registered as agents of broker-dealers may apply up to six credits earned in FINRA continuing education courses to satisfy the requirements of Rule 11.02.

Practical Tips/Reminders:

- 50 min = 1 credit; there are no mandatory courses.
- Credits are recorded as completed through FINRA's existing FinPro system by the course provider (not by the IAR).
- Credits need to be "IAR CE approved" by Prometric (a third party), provided by an approved course provider and notated as "IAR CE" approved.
- For IARs that are dually registered with WI and FINRA, up to 6 credits can be submitted to comply with the "Products and Practice" requirement of the rules (6 additional credits would still be needed).
- There is a fee of $3 per credit ($36 total) that can be paid on the FinPro portal (credits will not appear on FinPro until the fee is paid).
- IARs that are registered in Arkansas, Colorado, Kentucky, Maryland, Michigan, Mississippi, Oklahoma, Oregon, South Carolina, Vermont and Washington D.C. must also comply with IAR CE requirements for 2023.

Helpful Websites/Presentations:

- FINRA IAR CE Presentation
- CE providers that have been approved by Prometric
- Helpful FAQs

Source: Godfrey & Kahn Investment Management Legal and Regulatory Update (July 2022), available here.

LATEST DEVELOPMENTS: FUNDS

SEC Staff Bulletin Addresses Advisory Fee Waivers

On February 2, 2023, the SEC staff issued a bulletin as a reminder to the industry that funds with advisory fee waivers that vary by classes should ensure there is no cross-subsidization between classes which is prohibited under Rule 18f-3 under the Investment Company Act. In assessing whether a differential fee waiver by class is acceptable, boards should be able to determine that "such fees, when added to the advisory fees that are paid by the waived class, after giving effect to the waiver, are at least equal to the amount of advisory fees paid by the other classes, such that the waiver for the waived class is demonstrably not being subsidized by other classes." Based on an industry publication's analysis of data from Morningstar Direct, "Of the more than 2,000 mutual funds with fee waivers or expense reimbursements in place last year, 35 also had different management fees across their share classes." Boards should consider how cross-subsidization is being monitored for and guarded against and whether the differential fee waivers remain appropriate.

Sources: Staff Bulletin: Differential Advisory Fee Waivers (Feb. 2, 2023), available here; Adrian D. Garcia, SEC Staff Sends 'Warning Shot' Over Expense Waivers, IGNITES (Mar. 24, 2023), available by subscription.

LITIGATION AND ENFORCEMENT ACTIONS

Court Vacates DOL Interpretation of "Regular Basis" in Rollover Suit

On February 13, 2023, a federal court in Florida vacated the investment advice policy underlying guidance the Department of Labor (DOL) issued in one of a series of Frequently Asked Questions (FAQs) regarding when advice to roll over assets from an employee benefit plan to an IRA will be considered to be on a "regular basis."

1975 Investment Advice Regulation

In 1975, the DOL and the Department of the Treasury established a five-part test for fiduciary status under ERISA and the Internal Revenue Code (Code). Under this test, a person with non-discretionary authority is deemed to be an "investment advice fiduciary" if they receive a fee or other compensation and give advice: (1) as to the value of securities or other property, or make recommendations as to the advisability of investing in, purchasing or selling securities or other property; (2) on a regular basis; (3) pursuant to a mutual agreement, arrangement or understanding; (4) that will serve as a primary basis for investment decisions; and (5) that will be individualized based on the particular needs of the plan or IRA.

The DOL used the preamble of Prohibited Transaction Exemption (PTE) 2020-02 to provide an interpretation of the "regular basis" prong of the foregoing test, and reiterated its interpretation in FAQ 7 in 2021.

FAQ 7: Regular Basis

FAQ 7 asks: When is advice to roll over assets from an employee benefit plan to an IRA considered to be on a "regular basis"?

The answer provides, in part, that "when the investment advice provider has not previously provided advice but expects to regularly make investment recommendations regarding the IRA as part of an ongoing relationship, the advice to roll assets out of an employee benefit plan into an IRA would be the start of an advice relationship that satisfies the regular basis requirement. The 1975 test extends to the entire advice relationship and does not exclude the first instance of advice, such as a recommendation to roll plan assets to an IRA, in an ongoing advice relationship."

Arbitrary and Capricious Interpretation of 1975 Investment Advice Regulation

The federal court in Florida found that the policy referenced in FAQ 7 is an arbitrary and capricious interpretation of the 1975 regulation. The court stated:

> Before a rollover occurs, a professional who gives rollover advice does so with respect to an ERISA-governed plan. However, after the rollover, any future advice will be with respect to a new non-ERISA plan, such as an IRA that contains new assets from the rollover. The professional's one-time rollover advice is thus the last advice that he or she makes to the specific plan. So, while an offer to provide future advice may, as the Department suggests, be the beginning of a relationship, that relationship is inherently divorced from the ERISA-governed plan. Because any provision of future advice occurs at a time when the assets are no longer plan assets, it is not captured by the "regular basis" analysis. Because the policy referenced in FAQ 7 abandons this plan-specific focus in the context of rollovers, it sweeps conduct into its purview that would not otherwise trigger fiduciary obligations.

Moving Forward

As of the date of publication, the DOL has not appealed the decision. However, the DOL has included a fiduciary investment advice regulation on its regulatory agenda so there likely will be more rulemaking to come from the DOL.

It is important to remember that advisers with discretionary authority over IRAs and ERISA plans are and always have been "investment advice fiduciaries" under the Code and ERISA, as applicable.

Advisers and broker-dealers with non-discretionary authority, on the other hand, were previously able to take the position that they were not fiduciaries under the Code or ERISA when they gave rollover advice, provided they did not have a pre-existing relationship with the plan or IRA owner. Depending on the outcome of the Florida decision,

next steps by the DOL and the facts and circumstances, advisers and broker-dealers may be able to revert to the prior position in the future. At this point in time, however, we do not recommend advisers or broker-dealers scrap their policies and procedures regarding rollovers, but instead take a wait and see approach.

Finally, there are also SEC regulations to keep in mind. For example, broker-dealers have obligations under Regulation Best Interest with respect to rollovers, and the SEC has published guidance for broker-dealers and advisers regarding retirement account rollover recommendations as discussed in our July 2022 Investment Management Legal and Regulatory Update.

Source: Am. Securities Ass'n v. U.S. Dept. of Labor, No. 22-cv-330, 2023 WL 1967573 (M.D. Fla. Feb. 13, 2023), available here.

COMPLIANCE DATES FOR FINAL RULES

Final Rule	Compliance Dates
Amendments to Form N-PX and Say-on-Pay Vote Disclosure	Rule and form amendments effective for votes occurring on or after July 1, 2023, with the first filings subject to the amendments due August 31, 2024, for the 12-month period ended June 30, 2024.
Shareholder Reports, Rule 30e-3 Amendments and Amended Advertising Rules	Rule and form amendments effective January 24, 2023, with a compliance date of July 24, 2024.

STATUS OF PROPOSED RULES

Proposed Rules for Funds and Advisers	Status
Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies	The SEC has reopened the comment period. Comments are due by May 22, 2023.
Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices	Comments were due November 1, 2022. The SEC has not taken any further action as of the date of publication.
Proposed Rules for Funds	**Status**
Investment Company Names	Comments were due November 1, 2022. The SEC has not taken any further action as of the date of publication.
Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting	Comments were due February 14, 2023. The SEC has not taken any further action as of the date of publication.
Proposed Rules for Advisers	**Status**
Modernization of Beneficial Ownership Reporting	Comments were due April 11, 2022. The SEC has not taken any further action as of the date of publication.
Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews	Comments were due November 1, 2022. The SEC has not taken any further action as of the date of publication.
Outsourcing by Investment Advisers	Comments were due December 27, 2022. The SEC has not taken any further action as of the date of publication.
Safeguarding Advisory Client Assets*	Comments due May 8, 2023.
Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information*	Comments due June 5, 2023.

* *Discussion included in this legal and regulatory update.*