GODFREY & KAHN

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Investment Management Legal and Regulatory Update

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LATEST DEVELOPMENTS

Paul Atkins Confirmed as SEC Chairman

On April 9, 2025, the U.S. Senate confirmed Paul S. Atkins as Chairman of the Securities and Exchange Commission. Paul Atkins previously served as a commissioner of the SEC from 2002 to 2008, appointed by President George W. Bush. Of note, Commissioners Mark T. Uyeda and Hester M. Peirce both served as legal counsel to Mr. Atkins during his time as a commissioner. More recently, he founded and served as the Chief Executive Officer of Patomak Global Partners, LLC, a firm providing consulting services to clients within the financial services industry regarding regulatory, compliance and strategic issues.

Sources: Statement on Senate Confirmation of Paul Atkins, SEC Statement (Apr. 9, 2025), available here; Paul S. Atkins, SEC Historical Summary of Chairmen and Commissioners (Dec. 3, 2024), available here; Paul Atkins Profile, Patomak Global Partners, available here.

Trump Administration Halts Pending Rulemaking Activity and Emphasizes Deregulation

Executive Order – Regulatory Freeze

On January 20, 2025, President Trump issued an executive order implementing a regulatory freeze pending review of proposed rules as well as adopted rules that have not yet been published by the Office of the Federal Register (OFR). The order requires such rules to be reviewed and approved by a department or agency head appointed or designated by the President. The Director or Acting Director of the Office of Management and Budget (OMB Director) may exempt certain rules from the order in emergency or urgent situations. The order also requires immediate withdrawal of rules that have been sent to the OFR but have not yet been published so that those rules can also be reviewed and approved in accordance with the order.

The order requests a 60-day postponement (beginning January 20, 2025) of rules that have been published but not yet taken effect to allow for department and agency heads to evaluate the rules in light of "questions of fact, law, and policy." The order also requests executive departments and agencies to consider whether the rules should be opened for comment by interested parties. The order states that there is a potential for additional delays in effectiveness for rules beyond the 60-day period if further review is deemed necessary. For rules that are reviewed with no issues raised, no further action is needed under the order and for rules in which the review leads to questions of law, fact or policy, departments and agencies are directed to consult with the OMB Director regarding next steps.

As of the date of this publication, the 60-day postponement has expired and no additional executive orders related to the regulatory freeze have been issued.

Executive Order – Deregulation

On January 31, 2025, President Trump issued another executive order relating to deregulation. Of note, the order requires that for every new rule or regulation that is promulgated, at least 10 existing rules must be proposed for elimination, with the goal of managing the cost impact of new regulations and keeping in line with the regulatory budget. The order also sets forth high-level guidelines for agencies in identifying and estimating regulatory costs and directs that the 2025 fiscal year costs for new and repealed regulations combined be less than zero.

Godfrey & Kahn Take: The executive orders apply to rules proposed by the SEC and affect federal rulemaking generally. Due to the overall uncertainty of proposed rules and the effectiveness of published rules, funds and advisers should continue to plan to comply with all published rules by their designated compliance dates unless a rule's compliance date is specifically extended by the SEC (for example, see the extension of the compliance dates for the SEC's names rule (Rule 35d-1 under the Investment Company Act) below).

In a related development, the SEC has reorganized its enforcement and exam divisions by having its staff report to new deputy directors for the West, Northeast or Southeast and for specialized units.

Sources: Regulatory Freeze Pending Review, White House Executive Order (Jan. 20, 2025), available here; Fact Sheet: President Donald J. Trump Launches Massive 10-to-1 Deregulation Initiative, The White House (Jan. 31, 2025), available here; Unleashing Prosperity Through Deregulation, Federal Register 90 FR 9065 (Jan. 31, 2025), available here; Exclusive: US Securities and Exchange Commission shakes up enforcement, exams units, Reuters (Apr. 2, 2025), available here.

SEC Votes to Remove Enforcement Division's Authority to Issue Formal Orders of Investigation

Effective March 14, 2025, the SEC has amended applicable regulations related to the Commission's delegation of authority to the Director of the Division of Enforcement (the 2025 Delegation Rule). Prior to this amendment, since August 11, 2009 (the 2009 Delegation Rule), the Director of the Division of Enforcement had the authority to unilaterally issue formal orders of investigation and designate the enforcement staff authorized to issue subpoenas. In adopting the 2009 Delegation Rule, the SEC stated that the purpose was "to expedite the investigative process" by removing the need for Commission approval "prior to performing routine functions." The Commission stated that the purpose in adopting the 2025 Delegation Rule was "to increase effectiveness by more closely aligning the Commission's use of its investigative resources with Commission priorities." As a result of this change, the Division of Enforcement must receive approval from the SEC's Commissioners to issue formal orders of investigation.

Godfrey & Kahn Take: As the 2025 Delegation Rule is new, the impact of the change is not yet determinable; however, the need for Commission approval may lead to fewer investigations and/or more lengthy proceedings.

Sources: Delegation of Authority to Director of the Division of Enforcement, SEC Final Rule Release No. 33-11366 (March 10, 2025), available here; It's Official: SEC Enforcement Has to Ask Before Launching Probes, Ignites (March 11, 2025), available here (by subscription); Delegation of Authority to Director of Division of Enforcement, SEC Final Rule Release No. 34-60448 (Aug. 5, 2009), available here.

SEC Announces New Crypto Task Force

On January 21, 2025, the SEC's then-Acting Chairman, Mark T. Uyeda, announced the formation of a crypto task force to be led by Commissioner Hester Peirce. The press release indicates that the task force will work collectively with the public, Congress and other stakeholders to focus on regulation, registration, disclosure and enforcement.

In a statement issued by Commissioner Peirce, she discusses the SEC's history with crypto, including prior enforcement actions, no-action letters, exemptive relief and public statements. She comments that in her view "the Commission's handling of crypto has been marked by legal imprecision and commercial impracticality." She notes that while the task force is committed to an improved regulatory environment for crypto, the Commission will still focus on protecting investors and preventing fraud.

Commissioner Peirce's statement also includes an overview of the task force's plans, some of which are highlighted below:

- Examine crypto assets and their status under the federal securities laws;

- Welcome requests for crypto-related no-action relief under specific circumstances;
- Create paths to registration for coin and token offerings;
- Develop an appropriate regulatory framework for advisers relating to custody of crypto assets;
- Consider applications relating to new crypto exchange-traded products;
- Collaborate with market participants interested in utilizing blockchain to modernize financial markets; and
- Explore international crypto offerings.

The task force has a website and is hosting a series of roundtables which began on March 21, 2025.

Godfrey & Kahn Take: We anticipate the new crypto task force will be a tailwind for new regulatory developments relating to crypto assets.

Sources: SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force, SEC Press Release 2025-30 (Jan. 21, 2025), available here; The Journey Begins, SEC Statement Commissioner Hester M. Peirce (Feb. 4, 2025), available here.

LATEST DEVELOPMENTS: FUNDS

SEC Extends Compliance Dates for Amendments to Investment Company Names Rule

The SEC recently extended the compliance dates for amendments to Rule 35d-1 under the Investment Company Act (the Names Rule), adopted in 2023. The SEC extended the compliance dates from December 11, 2025 to June 11, 2026 for fund groups with net assets of $1 billion or more as of the end of their most recent fiscal year (larger entities), and from June 11, 2026 to December 11, 2026 for fund groups with less than $1 billion in net assets as of the end of their most recent fiscal year (smaller entities).

The SEC's extension also ties the Names Rule compliance dates with the filing of a fund's "on-cycle" annual updating amendment to its registration statement. The SEC noted that linking the compliance dates with a fund's annual update prevents funds from bearing expenses associated with an "off-cycle" post-effective amendment filing.

The compliance date extensions apply as follows:

- A new fund will be required to comply with the amendments to the Names Rule at the time its initial registration statement is effective on or following June 11, 2026 (for larger entities) or December 11, 2026 (for smaller entities).
- An existing open-end fund, or other continuously offered fund, will be required to comply with the amendments to the Names Rule at the time of the effective date of its first "on-cycle" annual updating amendment on or following June 11, 2026 (for larger entities) or December 11, 2026 (for smaller entities).
- An existing closed-end fund relying on Rule 8b-16(b) under the Investment Company Act will need to comply with the amendments to the Names Rule at the time of the transmittal of its next annual shareholder report on or following June 11, 2026 (for larger entities) or December 11, 2026 (for smaller entities).

Godfrey & Kahn Take: The SEC's extension gives welcome relief to funds to further prepare for the regulatory requirements of compliance with the amendments to the Names Rule. Depending on the timing of a fund's fiscal year end, a fund may comply with the amendments to the Names Rule in connection with its first "on-cycle" annual updating amendment filed after the extended compliance date applicable to the fund. For example, if a large fund group's fiscal year end is December 31, 2026, a fund in the fund group would not be required to comply with the amendments to the Names Rule until it files its first "on-cycle" annual updating amendment in April 2027.

Sources: SEC Extends Compliance Dates for Amendments to Investment Company Names Rule, SEC Press Release 2025-54 (March 14, 2025), available here; Investment Company Names; Extension of Compliance Date, SEC Final Rule Release No. IC-35500 (March 14, 2025), available here.

Staff Guidance: 2025 Names Rule FAQs

On January 8, 2025, the SEC published Frequently Asked Questions (FAQs) related to the amendments to the Names Rule. The SEC staff indicated in the FAQs that the Commission is withdrawing its previous FAQs published in 2001 related to the initial adoption of the Names Rule. The FAQs address when shareholder approval is required if a fund adopts or revises a fundamental 80% investment policy to comply with the amendments to the Names Rule. The FAQs also address the application of the amendments to the Names Rule for: (i) single-state tax-exempt funds; and (ii) funds with names that include one or more of the following terms: "municipal," "high yield," "tax-sensitive," "income" or "money market."

Sources: 2025 Names Rule FAQs, SEC Division of Investment Management: Frequently Asked Questions (Jan. 8, 2025), available here.

SEC Accounting & Disclosure Information (ADI) Website Posting Observations

In January 2025, the SEC published ADI 2025-15 to address website posting issues under SEC rules and exemptive orders, including those related to the use of summary prospectuses, exchange-traded funds (ETFs) and money market funds (MMFs). The SEC emphasizes the importance of website posting requirements in providing information on the internet to investors.

As it relates to summary prospectuses, the SEC observed a number of deficiencies associated with website disclosure, including the following:

- failure to include a compliant website address on the cover page of the summary prospectus;
- failure to include a table of contents in the statutory prospectus and statement of additional information (SAI), as well as a lack of other tools, such as side bars, to ensure investors are able to easily navigate fund documents; and
- failure to link the summary prospectus to the statutory prospectus and SAI, or only partially satisfying the linking requirements.

Regarding ETFs, the SEC observed the following deficiencies with website disclosure:

- failure to include CUSIPs or other identifiers within daily holdings;
- failure to present premiums and discounts as a percentage (as required by Rule 6c-11) and instead, presenting such information as dollar figures, and referring to premiums and discounts using other terminology that may be unclear to investors;
- failure to timely disclose historic premium and discount information as of the most recent quarter-end;
- for registrants not relying on Rule 6c-11, failure to present premium and discount information as required by their exemptive relief or Form N-1A;
- presenting 30-day median bid-ask spread information by using terminology that may be confusing to investors, such as omitting the term "30-day;" and
- if applicable, failure to include information that premiums and/or discounts exceeded 2% (for seven consecutive trading days) along with an explanation of the factors that led to such premiums or discounts.

With respect to MMFs, the SEC observed registrants failing to post the required link to the SEC's website so investors can easily access information filed by the MMF on Form N-MFP.

Godfrey & Kahn Take: The SEC staff's published observations are a helpful reminder for industry participants to review and ensure that all required disclosures are properly and accurately posted on fund websites.

Sources: ADI 2025-15 Website Posting Requirements, SEC Electronic Communications (Jan. 16, 2025), available here.

LATEST DEVELOPMENTS: ADVISERS

Updates to Marketing Compliance Frequently Asked Questions

The SEC recently published two new FAQs relating to Rule 206(4)-1 (the Marketing Rule).

Gross and Net Performance and Extracted Performance: The first new FAQ relates to the disclosure of extracted performance (i.e., the performance of one investment or group of investments in a private fund or other portfolio) in advertisements.

Ordinarily, the Marketing Rule would require an adviser to include net extracted performance in an advertisement that includes gross extracted performance. However, the FAQ provides that the SEC staff would not recommend enforcement action if an adviser displays only the gross extracted performance if: (i) the extracted performance is clearly identified as gross performance; (ii) the extracted performance is presented along with the total portfolio's gross and net performance; (iii) the gross and net performance of the total portfolio is presented with at least equal prominence to, and presented such that a prospective investor is easily able to compare such performance against, the extracted performance; and (iv) the gross and net performance of the total portfolio is calculated over a period that includes the whole period for which the extracted performance is calculated. Further, the FAQ provides that the SEC staff will not recommend enforcement action if extracted performance is presented as discussed and is calculated over a single period that is explicitly stated.

Portfolio of Investment Characteristics: The second new FAQ relates to uncertainty in the Marketing Rule due to the lack of a specific definition of what constitutes "performance" under the Rule. The FAQ specifically applies to certain portfolio or investment "characteristics," including yield, coupon rate, contribution to return, volatility, sector or geographic returns, attribution analyses, Sharpe ratio, the Sortino rate and other similar metrics.

The FAQ provides that the SEC staff would not recommend enforcement action if an adviser presents one or more gross characteristics of a portfolio or investment without showing the corresponding net characteristic(s), if: (i) the gross characteristic is clearly identified as being calculated without the deduction of fees and expenses; (ii) the total portfolio's gross and net performance are also presented in accordance with the Marketing Rule; (iii) gross and net performance of the total portfolio is presented with at least equal prominence to the gross characteristic, making them easily comparable; and (iv) the gross and net performance of the total portfolio is calculated over a period that includes the entire period over which the gross characteristic is calculated. Similar to above, the SEC staff will not recommend enforcement action if gross characteristics are presented as discussed and are calculated over a single period that is explicitly stated.

The FAQ clarifies, for avoidance of doubt, that the SEC staff's position above not does not apply to certain other specific "characteristics," including total return, time-weighted return, return on investment (ROI), internal rate of return (IRR), multiple on invested capital (MOIC) or total value to paid in capital (TVPI).

Godfrey & Kahn Take: Advisers should review their presentation of performance-related characteristics and/or extracted performance in any advertising materials to ensure compliance with the SEC staff's new FAQ guidance.

Sources: Marketing Compliance Frequently Asked Questions, SEC FAQs (Updated Mar. 19, 2025), available here; Investment Adviser Marketing, SEC Final Rule Release No. IA-5653 (May 4, 2021), available here.

OTHER NEWS OF INTEREST

U.S. Companies and U.S. Persons Exempt from Beneficial Ownership Information Reporting Under the Corporate Transparency Act

The Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Treasury Department (Treasury Department), issued an interim final rule narrowing existing beneficial ownership information (BOI) reporting requirements under the Corporate Transparency Act (CTA) by removing BOI reporting requirements for U.S. companies and U.S. persons.

Under the interim final rule, all entities established in the U.S, and their beneficial owners, are exempt from BOI

reporting requirements under the CTA. This means that only foreign entities that are "reporting companies" (previously defined as "foreign reporting companies"), with limited exceptions, under the interim final rule are required to report their BOI as follows:

- Reporting companies registered to do business in the U.S. *before* March 26, 2025, must file BOI reports by April 25, 2025; and
- Reporting companies registered to do business in the U.S. *on or after* March 26, 2025, have 30 calendar days to file an initial BOI report after receiving notice that their registration is effective.

The interim final rule exempts foreign reporting companies from reporting the BOI of any U.S. persons who are beneficial owners of the foreign reporting company and exempts U.S. persons from having to provide information to any foreign reporting company of which they are a beneficial owner.

The interim final rule supports the Treasury Department's announcement earlier in March 2025 stating that it will not enforce any penalties or fines related to BOI reporting, and it will not enforce any penalties or fines against U.S. citizens or domestic reporting companies, or their beneficial owners.

The interim final rule is expected to be finalized this year. For additional information, please visit FinCEN's website, available here, and the Treasury Department's website, available here.

Godfrey & Kahn Take: It is unclear whether the new interim rule will moot the current challenges to the CTA going through the courts. The CTA is still law and the potential for U.S. companies and U.S. persons to be required to report under the CTA is still a possibility. It would take an act of Congress or a court ruling the CTA unconstitutional, which may yet happen, to repeal it. Of course, a new administration in the future may change the rule and begin enforcement against U.S. companies and U.S. persons if the CTA is not repealed or found unconstitutional.

Sources: Treasury Department Announces Suspension of Enforcement of Corporate Transparency Act Against U.S. Citizens and Domestic Reporting Companies, U.S. Dept. of Treasury Press Release (March 2, 2025), available here; FinCEN Removes Beneficial Ownership Reporting Requirements for U.S. Companies and U.S. Persons, Sets New Deadlines for Foreign Companies, FinCEN Release (Mar. 21, 2025), available here; Beneficial Ownership Information Reporting Requirement Revision and Deadline, FinCEN Interim Final Rule RIN 1506-AB49 (Mar. 21, 2025), available here; Beneficial Ownership Information, FinCEN Alert (Updated Mar. 26, 2025), available here; BOI Frequently Asked Questions, Financial Crimes Enforcement Network, available here.

Updates to Compliance and Disclosure Interpretations (C&DIs) for Beneficial Ownership Reporting on Schedules 13D and 13G

Sections 13(d) and 13(g) of the Securities Exchange Act of 1934, and Regulation 13D-G, require a shareholder who beneficially owns more than 5% of a covered class of equity securities to file, as applicable, a report on either Schedule 13D or Schedule 13G. Schedule 13G is an alternative form to Schedule 13D for shareholders that meet certain eligibility requirements relating to passive investing (i.e., investing in the ordinary course of the person's business and not with the purpose or effect of changing or influencing the control of the issuer).

The SEC's Division of Corporation Finance has issued C&DIs regarding Sections 13(d) and 13(g) and Regulation 13D-G that have been amended over time. The SEC staff recently updated the C&DIs on February 11, 2025 to revise Question 103.11 and add a new Question 103.12 to supplement the staff's guidance relating to shareholder engagement with an issuer's management.

The SEC staff's guidance in Question 103.11 still provides that a shareholder's inability to rely on the exemption from the Hart-Scott-Rodino Act's notification and waiting period provisions if, among other things, the acquisition of securities was made "solely for the purpose of investment" with the shareholder having "no intention of participating in the formulation, determination or direction of the basic business decisions of the issuer" does not, in and of itself, preclude a shareholder from filing a report on Schedule 13G. The guidance in Question 103.11 was updated to indicate that a determination whether a shareholder has the purpose or effect of changing or influencing control of the issuer is dependent on all relevant facts and circumstances and will be informed by the meaning of "control" as defined in Rule 12b-2 under the Exchange Act. Specific examples of shareholder activities involving engagement with management were removed from Question 103.11 and included in the new Question 103.12.

The SEC staff's guidance in new Question 103.12 details circumstances under which a shareholder would lose its eligibility to file a report on Schedule 13G for engaging with company management on a particular topic. The guidance reiterates that whether a shareholder acquired or is holding securities with the "purpose or effect of changing or influencing control of the issuer" is dependent on all relevant facts and circumstances and also references the meaning of "control" in Rule 12b-2 under the Exchange Act. The guidance indicates that the *subject matter* of a shareholder's engagement with the issuer's management may be dispositive and provides specific examples of engagement that would prohibit a shareholder from filing a report on Schedule 13G, including a shareholder calling for: (1) the sale of the issuer or a significant amount of the issuer's assets; (2) the restructuring of the issuer; or (3) the election of director nominees other than the issuer's nominees. The guidance also highlights that the *context* in which the engagement occurs is also highly relevant, noting that a shareholder who discusses with management its views on a particular topic and how its views may inform its voting decisions, without more, would not be disqualified from reporting on Schedule 13G. However, shareholder engagement that goes beyond such a discussion may be crossing the threshold into "influencing" control and the SEC staff provides additional specific examples of such recommendations and/or discussions with management (for example, recommending that the issuer remove its staggered board and, as a means of pressuring the issuer to adopt the recommendation, explicitly or implicitly conditioning its support of one or more of the issuer's director nominees at the next director election on the issuer's adoption of its recommendation).

Godfrey & Kahn Take: Shareholders will need to continuously evaluate their approach to engagement with issuers to determine their eligibility to initially report or continue to report on Schedule 13G. If filing a report on Schedule 13G is a priority, both the subject matter and context of a shareholder's interactions with management should be properly limited in scope to ensure eligibility.

Sources: Exchange Act Sections 13(d) and 13(g) and Regulation 13D-G Beneficial Ownership Reporting, SEC Staff Guidance: Compliance and Disclosure Interpretations (Updated Feb. 11, 2025), available here.

COMPLIANCE DATES FOR FINAL RULES

Final Rules	Compliance Dates
Investment Company Names Rule Amendments*	Larger fund groups (net assets of $1 billion or more): June 11, 2026 Smaller fund groups (net assets of less than $1 billion): December 11, 2026 Note that the compliance dates specified above for existing funds are further modified based on the timing of a fund's first "on-cycle" annual updating amendment.
Corporate Transparency Act*	FinCEN adopted an interim final rule exempting all entities established in the U.S, and their beneficial owners, from the BOI reporting requirements under the CTA. Only foreign entities that are "reporting companies" (previously defined as "foreign reporting companies"), with limited exceptions, under the interim final rule are required to report their BOI as follows: ▪ Reporting companies registered to do business in the U.S. *before* March 26, 2025, must file BOI reports by April 25, 2025; and ▪ Reporting companies registered to do business in the U.S. *on or after* March 26, 2025, have 30 calendar days to file an initial BOI report after receiving notice that their registration is effective.
Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information	Rule amendments were effective August 2, 2024, with tiered compliance dates: Larger entities (investment companies with net assets of $1 billion or more, registered advisers with assets under management of $1.5 billion or more, and broker-dealers and transfer agents that are not small entities under the Securities Exchange Act of 1934): December 21, 2025. Smaller entities (covered institutions who do not meet the "larger entity" thresholds): June 21, 2026.
Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs	The final rule is effective November 17, 2025, with tiered compliance dates: Larger entities (funds that, together with other investment companies in the same "group of related investment companies" with net assets of $1 billion or more as of the end of the most recent fiscal year): November 17, 2025. Smaller entities (funds that, together with other investment companies in the same "group of related investment companies" with net assets of less than $1 billion as of the end of the most recent fiscal year): May 18, 2026.

Final Rules	Compliance Dates
FinCEN Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers	The final rule is effective January 1, 2026.
EDGAR Filer Access and Account Management (EDGAR Next)	The final rule is effective March 24, 2025. The compliance date for amended Form ID is March 24, 2025. The compliance date for EDGAR Next Enrollment is September 15, 2025.

**Discussion included in this IM Update*

STATUS OF PROPOSED RULES

Proposed Rules for Funds and Advisers	Status
Enhanced Disclosures by Certain Investment Advisers and Investment Companies about Environmental, Social, and Governance Investment Practices	The SEC has indicated final rules will be issued in October 2025.
Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies	The SEC has indicated final rules will be issued in October 2025.
Outsourcing by Investment Advisers	The SEC has indicated final rules will be issued in April 2025.
Safeguarding Advisory Client Assets	The SEC has indicated a second notice of proposed rulemaking is scheduled for April 2025.
Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers	The SEC had indicated a second notice of proposed rulemaking was scheduled for December 2024.
Customer Identification Program Requirements for Registered Investment Advisers and Exempt Reporting Advisers	The SEC has indicated final rules will be issued in March 2025.