GODFREY & KAHN

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Investment Management Legal and Regulatory Update

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

Ellen R. Drought
414.287.9517
edrought@gklaw.com

Carol A. Gehl
414.287.9255
cgehl@gklaw.com

Emma L. Janicki
414.287.9253
ejanicki@gklaw.com

Pamela M. Krill
608.284.2225
pkrill@gklaw.com

LATEST DEVELOPMENTS

SEC Withdraws Numerous Proposed Rules

On June 12, the SEC withdrew 14 rule proposals published in 2022 and 2023, indicating that it "does not intend to issue final rules with respect to these proposals." The SEC stated that "[i]f the Commission decides to pursue future regulatory action in any of these areas, it will issue a new proposed rule." The SEC withdrew the following rules:

1. Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers
2. Safeguarding Advisory Client Assets
3. Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies and Business Development Companies
4. Enhanced Disclosures by Certain Investment Advisers and Investment Companies About Environmental, Social and Governance Investment Practices
5. Outsourcing by Investment Advisers
6. Prohibition against Fraud, Manipulation, and Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers
7. Substantial Implementation, Duplication and Resubmission of Shareholder Proposals under Exchange Act 14a-8
8. Position Reporting of Large Security-Based Swap Positions
9. Volume-Based Exchange Transaction Pricing for NMS Stocks
10. Regulation Best Execution
11. Order Competition Rule
12. Regulation Systems Compliance and Integrity
13. Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies et. al.
14. Supplemental Information and Reopening of Comment Period for Amendments to Exchange Act Rule 3b-16 Regarding the Definition of "Exchange"

The first five proposals listed above would have imposed significant new compliance burdens on investment advisers with respect to topics such as artificial intelligence, cybersecurity, asset management custody and outsourcing of functions to third parties. Investment companies would have

been required to comply with new cybersecurity risk management proposals and certain funds and advisers would have been subject to additional ESG disclosure requirements.

Godfrey & Kahn Take: In light of the SEC's deregulatory agenda and industry advocacy discussed below, we expected some of these proposals to be withdrawn or modified. However, the scope of the withdrawn rules was surprising.

Sources: Withdrawal of Proposed Regulatory Actions, SEC, Final Rule Release No. 33-11377 (June 12, 2025), available here.

SEC Announces Departure of Natasha Vij Greiner; Brian Daly Named Director of the Division of Investment Management

The SEC announced on June 10, 2025 that Natasha Vij Greiner, the Director of the Division of Investment Management, would leave the SEC effective July 4, 2025, after more than 23 years with the agency and just over one year as Director of the division. Ms. Greiner has been replaced by Brian Daly, a lawyer with over 20 years of experience in the investment management industry.

Mr. Daly was most recently a partner at Akin Gump Strauss Hauer & Feld LLP where he advised private equity, hedge fund and venture capital managers. Previously, Mr. Daly was a partner at Schulte Roth & Zabel LLP, where he represented private fund managers. He was also a founding equity partner and Chief Legal Officer of Kepos Capital, a boutique alternative investment firm.

Godfrey & Kahn Take: Given the SEC's heightened interest in private assets, Mr. Daly's appointment may signal the agency's intent to increase retail investors' access to private assets through rule proposals and other industry-friendly regulation.

Sources: Natasha Vij Greiner Will Conclude Her Tenure as Director of Investment Management, SEC Press Release 2025-84 (June 10, 2025); available here; Brian Daly Named Director of Division of Investment Management, SEC Press Release 2025-88 (June 13, 2025), available here.

Industry Advocates for Rule Changes and SEC Priorities

In recent months, industry and government groups have called for the repeal of rules or the extension of the compliance dates for SEC, Department of Labor (DOL) and Treasury Department rulemaking. As noted above, numerous rule proposals impacting investment companies and investment advisers were withdrawn in June 2025.

General Appeal for Recission of Existing Rules

- In April 2025, the Office of Management and Budget (OMB) issued a request for information regarding deregulation and rules to be rescinded. The request was seeking "comments from the public on regulations that are unnecessary, unlawful, unduly burdensome or unsound."
- The Investment Company Institute (ICI) responded to the OMB's request in a letter dated May 12, 2025, in which it provided a list of rules to rescind as well as other recommendations. Specifically, the ICI recommended that the SEC:
    - Reconsider and repeal the recent "names rule" amendments for investment companies. The ICI letter acknowledges that the SEC has extended the compliance date but states that the names rule amendments continue to "present significant interpretative and operational challenges."
    - Reverse the recent N-PORT amendments, which would require more frequent disclosure of fund portfolio holdings.

Request for Modernization of 1940 Act; Revisit Existing Rules

- Some of the ICI's recommendations, and others, were discussed in more detail in the ICI's recent report: "Reimagining the 1940 Act: Key Recommendations for Innovation and Investor Protection." In this March 2025 report, the ICI discussed ways to modernize the 1940 Act, following a three-year review. Recommendations include:

- Restoring the ability of funds to cross trade fixed income securities;
- Modernizing the requirements for in-person votes by fund directors;
- Allowing funds to offer both mutual fund and ETF share classes;
- Allowing funds to use electronic delivery as a default delivery option;
- Reforming the proxy system for investment companies, given the significant costs and difficulties in reaching quorum;
- Revising the requirements related to fund board oversight of subadvisory agreements;
- Revising the "interested person" test under the 1940 Act as it relates to personal investments and business relationships of independent directors; and
- Expanding the number of independent directors that can be appointed by a board without the need for shareholder approval.

- The ICI provided recommendations from the report in a letter to new SEC Chairman Paul Atkins in April 2025, prioritizing items such as cross-trading of fixed income securities, improvements to the fund proxy system, electronic delivery and ETF share classes of mutual funds.
- The Financial Services Committee of the House of Representatives wrote to Acting Chairman Uyeda on March 31, 2025, requesting the SEC to revisit "several final rules promulgated by the previous Administration" including the following final and proposed rules: (1) Cybersecurity Risk Management, (2) Investment Company Names, (3) Form N-PORT and N-CEN Reporting, (4) Conflicts of Interest Associated with the Use of Predictive Data Analysis, (5) Outsourcing by Investment Advisers and (6) Enhanced Disclosures about ESG Practices.

Specific Appeal to Delay/Reconsider AML and Privacy Rule Changes

- The Investment Adviser Association (IAA) set forth its priorities for consideration by then Acting SEC Chairman Mark T. Uyeda in a letter dated January 29, 2025.
  - The IAA asked that the SEC collaborate with the Financial Crimes Enforcement Network (FinCEN) of the Treasury Department to delay the effective date of the anti-money laundering rule (AML Rule) for investment advisers, reopen the comment period so that it can be considered with the customer identification program for investment advisers (CIP Rule) and harmonize the compliance dates of both rules. The AML Rule is set to take effect on January 1, 2026. The CIP Rule has not yet been adopted.
  - The IAA also recommended that the SEC extend the compliance period for amendments to the consumer data privacy rules, Regulation S-P, together with other new rules.
- The ICI also requested an extension of the AML Rule for investment advisers in a letter to FinCEN dated April 8, 2025. The letter requested an extension until at least 18 months after the CIP Rule is finalized.
- The Securities Industry and Financial Markets Association (SIFMA) joined the IAA, ICI and banking, insurance and retirement associations in requesting an extension of the compliance dates for the Regulation S-P amendments in a letter to Chairman Atkins dated April 25, 2025. The letter cited the lack of consistency with state data breach laws, the need for changes to service provider agreements to require notice of data breaches within 72 hours and the need to align policies and procedures with other laws, such as GDPR and "emerging artificial intelligence laws in the United States and Europe."

Other Requests

- The ICI also made recommendations to the DOL regarding the need to expand the qualified professional asset manager (QPAM) exemption and to rescind the DOL fiduciary rule as it relates to IRAs.

Godfrey & Kahn Take: Given President Trump's "regulatory freeze" directive, recent executive orders and other extensions to compliance dates, it is reasonable to expect delays in the effective dates of the Regulation S-P amendments and the AML Rule. However, in light of the significant compliance lift associated with both rules, funds and advisers should begin to review current policies and procedures, and determine what changes are necessary, to ensure they are prepared in the event the rules are implemented as scheduled.

Sources: Letter from H. Fin. Servs. Comm. to Mark T. Uyeda, Comm'r, SEC (Mar. 31, 2025), available here; Letter from ICI to Paul S. Atkins, Comm'r, SEC, Re: Recommendations for Innovation and Investor Protection (Apr. 11, 2025), available here; Letter from ICI to Russel T. Vought, Dir., Off. of Mgmt and Budget, Re: Request for Information on Deregulation (May 12, 2025), available here; Letter from ICI to Andrea Gacki, Director, FinCEN, Re: Request to Delay AML/CFT Program and Suspicious Activity Reporting Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers (Apr. 8, 2025), available here; Reimagining the 1940 Act: Key Recommendations for Innovation and Investor Protection, ICI (March 2025), available here; Letter from SIFMA et al. to Paul Atkins, Chairman, SEC, Re: Request for Extension of Compliances Dates for Amendments to Regulation S-P (Apr. 25, 2025), available here; Letter from IAA to Mark T. Uyeda, Acting Chairman, SEC, Re: Key Regulatory Priorities for Investment Advisers (Jan. 29, 2025), available here.

The SEC and Industry Stakeholders Continue to Grapple with Crypto Regulation

Following the formation of the SEC's new crypto task force in January, led by Commissioner Hester Peirce, the task force launched a roundtable series titled "Spring Sprint Toward Crypto Clarity," aimed at discussing key areas of interest related to the regulation of crypto assets. The roundtables featured panelists from a wide array of backgrounds, and covered topics such as (1) whether crypto assets are securities subject to SEC jurisdiction under existing law, (2) the practical implications and challenges of tailoring regulation for crypto trading, and (3) tokenization, the growth of blockchain technology and whether today's regulatory framework is compatible with these technological advances. At the fifth and final roundtable, Commissioner Caroline Crenshaw delivered remarks that addressed what had been accomplished during the roundtable series and where the task force and the SEC should go from here. Commissioner Crenshaw noted that while the roundtables were billed as a "spring sprint" toward simple clarification of key regulatory considerations, the process has proven that very little having to do with crypto regulation is quick or easy. She stated, "With issues this complex and stakes this high, it's better to do it right than fast. We need to grapple with the tough questions through the legally sanctioned process of formal rulemaking, as Chairman Atkins alluded to earlier [in his opening remarks], with full opportunity for notice and comment and public interest findings."

As of the date of this publication, the SEC has not proposed any rules related to crypto assets, but Commissioner Peirce did release a statement titled "There Must be Some Way Out of Here" requesting input from the industry on a variety of questions with which the task force is currently wrestling regarding the regulation of crypto assets. The questions were divided into topical categories, including:

- Securities status of crypto assets;
- Categories of crypto assets and transactions that are outside the scope of the Commission's authority;
- Possible safe harbor from registration;
- Trading of crypto assets;
- Custody of crypto assets; and
- Crypto exchange-traded products.

SIFMA submitted a comment letter on May 9, 2025, in response to Commissioner Peirce's request, focused primarily on securities status and scope, issues related to the safekeeping of digital assets, and the modernization of the current regulatory framework. SIFMA noted it plans to provide additional feedback on the other issues raised in Commissioner Peirce's statement in a separate comment letter.

Securities Status and Scope

SIFMA recommends that the SEC adopt clear, consistent and consensus-driven taxonomies and classification approaches as a crucial first step in the development of effective digital asset regulations. SIFMA also suggests that the determination of whether a digital asset is a security should be based upon the intrinsic economic characteristics

of an asset rather than factors extrinsic to the asset. It notes that the focus of the SEC's taxonomy should be whether the digital asset by its terms conveys or provides observable features, such as providing an ownership interest in a legal entity, that would cause the asset to be classified as a security under US federal securities laws. SIFMA also supports the SEC's efforts to provide guidance on out-of-scope digital assets that are not securities.

Custody

SIFMA recommends the application of traditional regulatory principles around custody and the role of the custodian to the custody of digital assets, and believes the SEC should not develop a new custody framework solely for digital assets nor should it proceed with its 2023 safeguarding proposal.

Regulatory Modernization

SIFMA notes that the current regulatory framework as it relates to securities status, custody and tokenized assets is not currently flexible enough to keep pace with rapidly changing technology. SIFMA recommends supplementing existing case law on the determination of securities status with flexible, principles-based guidance and FAQs. It also recommends targeted policy changes to clarify how existing requirements apply to tokenized securities in areas such as recordkeeping, custody, and clearing and settlement.

Godfrey & Kahn Take: The task force has prompted lots of discussion in the industry on the future of crypto and digital asset regulation, but at this stage it has created more questions than answers. Crypto will continue to be a priority at the SEC but there is no indication that a rule proposal, guidance, or even industry consensus on next steps is on the horizon.

Sources: Crypto Task Force Roundtables SEC (Updated June 12, 2025), available here; Remarks at the Final Crypto Task Force Roundtable: Where We Go From Here, SEC Commissioner Caroline A. Crenshaw Speech (June 9, 2025), available here; There Must Be Some Way Out of Here, SEC Commissioner Hester M. Peirce Statement (Feb. 21, 2025), available here; Letter from Sifma to Hester M. Peirce, Comm'r, SEC, Re: Request for Comment on 'There Must Be Some Way Out of Here' (May 9, 2025), available here.

LATEST DEVELOPMENTS: FUNDS

SEC Extends Compliance Dates for Amendments to Form N-PORT; Form N-CEN Compliance Date Unchanged

The SEC recently extended the compliance date for amendments to Form N-PORT and the related rule under the Investment Company Act of 1940. The SEC extended the compliance date from November 17, 2025 to November 17, 2027 for larger entities (funds with net assets of $1 billion or more) and from May 18, 2026 to May 18, 2028 for smaller entities.

The N-PORT amendments were adopted in August 2024 and will require funds to report portfolio holdings more frequently, on a monthly basis within 30 days of month end. The Registered Funds Association challenged the amendments in a suit filed in October 2024 in the U.S. Court of Appeals for the Fifth Circuit. The suit petitioned the court for review of the N-PORT order due to the potential harm to funds from monthly disclosure of proprietary holdings information and alleging that the SEC exceeded its statutory authority in adopting the amendments. The court stayed the proceeding while the SEC reviews the rule in accordance with the President's "regulatory freeze" memorandum.

In the press release announcing the extension, the SEC stated that "the extension is designed to provide for the Commission to complete its review in accordance with a Presidential Memorandum and to take any further appropriate actions, which may include proposed amendments to Form N-PORT." The SEC release acknowledged the ICI's request for further action on N-PORT "due to concerns about the potential negative impacts of the recent amendments."

The SEC noted that it has "completed its review of the amendments to Form N-CEN and guidance on liquidity risk management program requirements in the 2024 Adopting Release in accordance with the Presidential Memorandum." Because those aspects of the release were not challenged in the litigation, the effective and compliance dates for the

Form N-CEN amendments will remain November 17, 2025 for funds of any size. The amendments to Form N-CEN will require funds to provide information about liquidity service providers that provide liquidity classifications for the fund. The liquidity rule guidance relates to intra-month reviews of liquidity classifications, clarifies that "convertible to cash" means convertible to U.S. dollars, and reiterates the SEC's guidance on how a fund should determine its highly liquid investment minimum.

Godfrey & Kahn Take: Given the change in leadership at the SEC since the N-PORT amendments were adopted, it is likely that the amendments will be changed or even withdrawn following the SEC's review.

Sources: Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk, Final Rule No. IC-35538 (Apr. 16, 2025), available here; SEC Extends Effective and Compliance Dates for Amendments to Investment Company Reporting Requirements, SEC Press Release 2025-64 (Apr. 16, 2025), available here; U.S. Court of Appeals 5th Circuit, Registered Funds v. SEC, Petition for Review, No. 24-60550 (October 29, 2024), available via PACER; U.S. Court of Appeals 5th Circuit, Registered Funds v. SEC, Order, No. 24-60550 (February 11, 2025), available via PACER.

COMPLIANCE DATES FOR FINAL RULES[1]

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.
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 PF Amendments to Reporting Requirements	The compliance date for the amendments to Form PF is October 1, 2025.
Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs*	**Form N-PORT** The final rule is effective November 17, 2027, 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, 2027. 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, 2028. **Form N-CEN** The effective and compliance date for the amendments to Form N-CEN is November 17, 2025.
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.

[1] As discussed in this Regulatory Update, given the change in administration and the recent withdrawal of 14 proposed rules, the commentors believe some of these final rules may be delayed or withdrawn.

Final Rules	Compliance Dates
EDGAR Filer Access and Account Management (EDGAR Next)	The final rule was effective March 24, 2025. The compliance date for amended Form ID was March 24, 2025. The compliance date for EDGAR Next Enrollment is September 15, 2025.

**Discussion included in this Regulatory Update.*