Investment Services Regulatory Update

March 2025

Monthly Version

VedderPrice

New Rules, Proposed Rules, Guidance and Alerts

NEW AND PROPOSED RULES

SEC Extends Compliance Dates for Names Rule Amendments

On March 14, 2025, the SEC announced a six-month extension of the compliance dates for its previously adopted amendments to Rule 35d-1 under the Investment Company Act of 1940 (known as the Names Rule). The compliance date is extended from December 11, 2025 to June 11, 2026 for large fund groups (net assets of $1 billion or more as of the end of their most recent fiscal year), and from June 11, 2026 to December 11, 2026 for small fund groups (less than $1 billion in net assets as of the end of their most recent fiscal year). In the adopting release providing the extension, the SEC noted that, through industry letters, it had "become aware of certain challenges that funds and their service providers are experiencing associated with the timing of the initial compliance dates."

In addition, to help funds avoid the costs of "off-cycle" filings to comply with the Names Rule amendments, the SEC modified the operation of the compliance dates to allow funds to comply as of their first "on-cycle" registration statement amendment or annual shareholder report, depending on the type of fund (discussed below), following their applicable new compliance date. For example, an open-end fund with a December 31 fiscal year end files an annual amendment to its registration statement effective no later than four months after its fiscal year end (i.e., effective by May 1), consistent with applicable requirements under the Securities Act of 1933 and the 1940 Act. If such fund is in a large fund group (i.e., net assets of $1 billion or more), the new compliance date scheme would allow such fund to comply with the Names Rule amendments as of its first "on-cycle" annual registration statement amendment following the June 11, 2026 compliance date (i.e., its May 1, 2027 amendment).

Specifically, the SEC modified the operation of the compliance dates as follows:

- An existing open-end fund (or other continuously offered fund) must comply with the Names Rule amendments on the effective date of its first "on-cycle" annual registration statement amendment filed on or following the new compliance date.
- An existing closed-end fund that relies on Rule 8b-16(b) under the 1940 Act must comply at the time of the transmittal of its first annual report to shareholders on or following the new compliance date.
- An existing business development company that is not engaged in a continuous offering must comply at the time of the filing of its first annual report on Form 10-K on or following the new compliance date.
- A new fund must comply at the time of the effective date of the initial registration statement that the fund files on or following the new compliance date.

The SEC stated in the adopting release that the extension is designed to balance the benefits to investors of the Names Rule amendments with the needs of funds for additional time to properly implement the amendments and to reduce the costs of implementation.

The SEC's adopting release for the compliance date extension is available here, and a related press release is available here.

FDIC Withdraws Proposed Rules Related to Change in Bank Control Act and Other Matters

On March 3, 2025, the Federal Deposit Insurance Corporation (FDIC) withdrew three proposed rules, including its July 2024 proposed amendments to regulations under the Change in Bank Control Act of 1978 (CBCA) that would have subjected certain acquisitions of holding companies of FDIC-supervised institutions to FDIC advance notice requirements. The proposed amendments to the CBCA regulations, if adopted, stood to have a material impact on large index fund complexes by, for example, requiring them to file a notice with the FDIC in advance of a rebalancing event that could result in a change in control (generally defined as the acquisition of a 25% ownership stake) of an FDIC-supervised institution. In the notice of withdrawal of the proposed amendments

to the CBCA regulations, the FDIC stated that the proposal "would have required a wide range of bank investors to file duplicative notices with both the FDIC and the Federal Reserve System and could have discouraged capital investments in FDIC-supervised banks."

Under the current regulations, which will remain in effect, an acquisition of a holding company of an FDIC-supervised institution is generally exempt from the FDIC notice requirement where the Federal Reserve Board (FRB) separately receives and reviews a notice under the CBCA. This exemption does not apply where the FRB accepts a "passivity commitment" from the acquiring entity in lieu of a notice, i.e., an agreement outlining the actions the acquiring entity will or will not take to rebut the regulatory presumption that the acquiring entity would control the acquired entity after the transaction. In such cases, the FDIC evaluates whether a notice to the FDIC is required and, in recent years, has typically not determined to require such notice.

The FDIC's notice of withdrawal is available here, and a related FDIC letter is available here.

SEC Grants One-Year Exemption from New Short Sale Reporting Requirements

On February 7, 2025, the SEC issued a one-year exemption from compliance with new Rule 13f-2 under the Securities Exchange Act of 1934 and related reporting on new Form SHO. The SEC adopted Rule 13f-2 and the Form SHO reporting requirements on October 13, 2023, requiring institutional investment managers to file confidential monthly reports with the SEC on Form SHO regarding certain short sale activity and positions for which the manager exercises investment discretion. Prior to the exemption, the compliance date for Rule 13f-2 and the Form SHO reporting was January 2, 2025, with initial Form SHO filings originally due by February 14, 2025 (14 calendar days after the end of the reporting month). In granting the temporary exemption, the SEC stated that the exemption would "provide industry participants sufficient time to complete implementation of systems builds and testing, as well as to work with Commission staff to address any outstanding operational and compliance questions regarding Form SHO reporting."

The temporary exemption ends on January 2, 2026. In the absence of further SEC action, Form SHO reports for the January 2026 reporting period are required to be filed within 14 calendar days after the end of January 2026 (i.e., February 17, 2026, due to the weekend and federal holiday).

The SEC's order is available here and a related press release is available here.

GUIDANCE AND OTHER DEVELOPMENTS

President Trump Issues Executive Actions Regarding Federal Agencies

In mid-February 2025, President Trump issued three executive actions (the orders) intended to improve the administration of the executive branch and enhance the accountability of Federal agencies. Among other things, the orders require that: (1) heads of Federal agencies prepare to initiate "large-scale" reductions in force (RIFs) and submit agency reorganization plans to the Director of the Office of Management and Budget (OMB); (2) Federal agencies, including independent agencies like the SEC, submit all proposed and final significant regulatory actions to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President for review prior to their publication in the Federal Register; (3) heads of independent agencies establish a White House Liaison position within their respective agencies; (4) agency heads review all regulations subject to their respective agencies' jurisdiction for consistency with law and Trump administration policy and identify regulations for potential modification or rescission; and (5) agency heads review their respective agencies' enforcement activity and de-prioritize or terminate enforcement actions based on their consistency with law and Trump administration policy. The three orders are summarized below.

Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative

Issued on February 11, 2025, this order seeks to reform the Federal workforce to maximize its efficiency and productivity through a series of mandates. Among other things, the order (referring to an earlier executive action mandating a freeze on the hiring of Federal civilian employees and requiring the OMB Director to submit a plan to reduce the size of the Federal government's workforce) mandates that the OMB Director's workforce reduction

plan shall require each agency to hire no more than one employee for every four employees that depart. In addition, each agency head shall develop a hiring plan to ensure new hires are in the "highest-need areas;" prepare to initiate RIFs, prioritizing the elimination of, among other areas, offices that perform functions not mandated by statute or other law; and submit a report to the OMB Director that identifies any statute that establishes the agency and its subcomponents and discusses whether the agency or its subcomponents should be eliminated or consolidated.

The order is available here and a related fact sheet is available here. A memorandum issued by the OMB Director on February 26, 2025, which provides further guidance on the agency RIFs and reorganization plans contemplated in the order, is available here.

Ensuring Accountability for All Agencies
Issued on February 18, 2025, this order seeks to improve the accountability of independent Federal agencies through enhanced Presidential oversight. Among other things, the order requires that all Federal agencies, including independent agencies, submit all proposed and final significant regulatory actions to OIRA for review prior to their publication in the Federal Register. The order also requires the OMB Director to implement various oversight measures with respect to independent agencies and requires independent agency heads to establish a White House Liaison position. The order also requires that the OMB Director establish "performance standards and management objectives" for independent agency heads and report to the President on their performance.

The order is available here and a related fact sheet is available here.

Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative
Issued on February 19, 2025, this order seeks to implement a deregulatory initiative within the executive branch and focus resources on "regulations squarely authorized by constitutional Federal statutes." Among other things, the order requires that agency heads review all regulations subject to their respective agencies' jurisdiction for consistency with law and Trump administration policy and identify regulations that fit within one of various enumerated classifications (e.g., regulations that exceed the Federal government's constitutional authority and regulations that are based on unlawful delegations of legislative power, among others). The order requires that OIRA consult with agency heads to develop a Unified Regulatory Agenda that seeks to rescind or modify these regulations, as appropriate. The order also requires that agency heads review their respective agencies' enforcement activity and de-prioritize or terminate enforcement actions based on their consistency with law and Trump administration policy.

The order is available here and a related fact sheet is available here.

SEC Forms Cryptocurrency Task Force and Cyber and Emerging Technologies Unit

Since SEC Commissioner Mark T. Uyeda was named Acting Chairman on January 21, 2025, the SEC has significantly shifted its approach to cryptocurrency regulation and enforcement actions, including through the formation of a crypto task force and a cyber and emerging technologies unit, as summarized below.

Formation of Crypto Task Force
On January 21, 2025, Acting Chairman Uyeda launched the SEC's Crypto Task Force led by Commissioner Hester Peirce. In the press release announcing the formation of the Crypto Task Force, the SEC stated that "the Task Force will collaborate with Commission staff and the public to set the SEC on a sensible regulatory path that respects the bounds of the law." The SEC's webpage about the Crypto Task Force states that

> [t]he scope of the Crypto Task Force's focus will include assets colloquially referred to as digital assets, crypto assets, cryptocurrencies, digital coins and tokens, as well as protocols. The Crypto Task Force will help to draw clear regulatory lines, appropriately distinguish securities from non-securities, craft tailored disclosure frameworks, provide realistic paths to registration for both crypto assets and market intermediaries, ensure that investors have the information necessary to make investment decisions, and make sure that enforcement resources are deployed judiciously.

The SEC noted that, prior to the formation of the Crypto Task Force, the SEC had "relied primarily on enforcement actions to regulate crypto retroactively and reactively, often adopting novel and untested legal interpretations along the way."

In light of the pending work of the Crypto Task Force, on January 23, 2025, the SEC rescinded a prior Staff Accounting Bulletin that provided interpretive guidance regarding accounting for obligations to safeguard crypto assets. In addition, on February 27, 2025 the SEC announced the dismissal of a civil enforcement action against two related entities based on the SEC's view that "the dismissal will facilitate the Commission's ongoing efforts to reform and renew its regulatory approach to the crypto industry."

On March 3, 2025, the SEC announced the members of the Crypto Task Force staff, which include staff from the Acting Chairman's office and other divisions and offices across the SEC, and also announced that the Task Force would host a series of roundtables to discuss key areas of interest in the regulation of crypto assets. The Crypto Task Force held the first roundtable on March 21, 2025, and four additional roundtables have been scheduled for April 11, April 25, May 12 and June 6, 2025.

Formation of the Cyber and Emerging Technologies Unit (CETU)
On February 20, 2025, the SEC announced the creation of the CETU to combat cyber-related misconduct and to protect retail investors from bad actors in the emerging technologies space. According to the SEC's press release, the CETU will focus on the following priority areas:

- "Fraud committed using emerging technologies, such as artificial intelligence and machine learning;
- Use of social media, the dark web, or false websites to perpetrate fraud;
- Hacking to obtain material nonpublic information;
- Takeovers of retail brokerage accounts;
- Fraud involving blockchain technology and crypto assets;
- Regulated entities' compliance with cybersecurity rules and regulations; and
- Public issuer fraudulent disclosure relating to cybersecurity."

Litigation and Enforcement Matters

ENFORCEMENT DEVELOPMENTS

SEC Revokes Enforcement Division's Formal Investigation Authority

On March 10, 2025, the SEC voted along party lines to amend SEC regulations in order to rescind the SEC's delegation of authority to the Director of the Division of Enforcement to issue formal orders of investigation. The SEC delegated this authority to the Director of the Division of Enforcement in 2009 for a one-year period, and in 2010 the SEC extended this delegation of authority indefinitely. The delegation allowed the Director to issue formal orders of investigation without the SEC's approval. Formal orders designate the staff of the Division of Enforcement authorized to issue subpoenas in connection with investigations under the federal securities laws. With the rescission of this delegation, the Division of Enforcement will need approval from the SEC in order to issue formal orders of investigation and issue subpoenas. The SEC stated that the recission "is the result of the Commission's experience with its nonpublic investigations" and is "intended to increase effectiveness by more closely aligning the Commission's use of its investigative resources with Commission priorities."

The final rule rescinding the SEC's delegation of authority was not preceded by notice of the proposed rulemaking and an opportunity for public comment because the SEC determined that the "amendment relates solely to agency organization, procedure, or practice." The final rule became effective on March 14, 2025.

The SEC's adopting release is available here.

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