Investment Services Regulatory Update

April 2025

Monthly Version

VedderPrice

New Rules, Proposed Rules, Guidance and Alerts

NEW AND PROPOSED RULES

SEC Ends Defense of Climate Disclosure Rules

On March 27, 2025, the SEC voted to end its legal defense of rules, previously adopted on March 6, 2024, which would have required public companies (excluding investment companies but not business development companies) to disclose information about their climate-related risks and greenhouse gas emissions in their registration statements and annual reports. The SEC's adoption of the climate disclosure rules was met nearly immediately with lawsuits challenging the rules from attorneys general of numerous states and other parties filed across numerous U.S. Circuit Courts of Appeals, which were ultimately consolidated in the Eighth Circuit. The SEC voluntarily stayed the rules on April 4, 2024, pending the Eighth Circuit's review of the consolidated cases, and briefing in the cases was completed prior to the change in Administration on January 20, 2025.

Following the SEC's vote to end its defense of the climate disclosure rules, SEC staff sent a letter to the court stating that the SEC was withdrawing its defense of the rules. SEC Acting Chairman Mark Uyeda explained that "[t]he goal of today's Commission action and notification to the court is to cease the Commission's involvement in the defense of the costly and unnecessarily intrusive climate change disclosure rules." Chairman Uyeda had previously signaled the SEC's intent to abandon its defense of the rules, issuing a statement on February 11, 2025 in which he criticized the rules as "deeply flawed" and questioned the SEC's statutory authority to adopt the rules. In light of his views, as well as the change in the SEC's composition following the Administration change and the "regulatory freeze" presidential memorandum that was issued on January 20, 2025, Chairman Uyeda announced in that statement that the SEC staff would request that the Eighth Circuit not schedule oral argument to provide time for the SEC to determine appropriate next steps in the cases.

On April 24, 2025, the court directed the SEC to report back within 90 days as to whether the SEC intends to review or reconsider the climate disclosure rules. If the SEC determines to take no action on the rules, it must notify the court whether it will adhere to the rules if the petitioners' challenge to the rules is denied, and, if not, why the SEC will not review or reconsider the rules.

The SEC's press release announcing the end of its legal defense is available here.

SEC Extends Compliance Dates for Form N-PORT Amendments

On April 16, 2025, the SEC announced a two-year extension of the compliance dates for its previously adopted amendments to Form N-PORT reporting requirements. Currently, funds are required to file Form N-PORT on a quarterly basis to report information on a fund's portfolio holdings as of month-end for each month in the quarter, within 60 days of quarter-end, with information for the third month of the quarter made publicly available. The amendments will require funds to file Form N-PORT on a monthly basis within 30 days of month-end, and information for each month will be publicly available 60 days after month-end. The compliance date was extended from November 17, 2025 to November 17, 2027 for large fund groups (net assets of $1 billion or more as of the end of their most recent fiscal year) and from May 18, 2026 to May 18, 2028 for small fund groups (less than $1 billion in net assets as of the end of their most recent fiscal year). The compliance date for the SEC's previously adopted amendments to Form N-CEN, adopted with the Form N-PORT amendments in the same August 2024 adopting release, was not extended and remains November 17, 2025. Additionally, the SEC guidance on open-end fund liquidity risk management program requirements, also issued in the same release, is unchanged.

In the adopting release providing the extension, the SEC cited the "regulatory freeze" presidential memorandum issued on January 20, 2025, which directed agencies to consider postponing the effective date for any rules that had been issued but had not yet taken effect in order to review "any questions of fact, law, and policy that the rules may raise." The SEC also cited a recent industry association request to further amend Form N-PORT, as well as the ongoing case in the U.S. Court of Appeals for the Fifth Circuit challenging the Form N-PORT amendments, which was stayed while the SEC reviews the amendments

in accordance with the presidential memorandum. The SEC explained that, in light of these developments, it was extending the compliance dates to provide time for the SEC to complete its review of the amendments in accordance with the presidential memorandum and to take any further appropriate actions, which may include additional amendments to Form N-PORT.

The SEC also stated in the adopting release that it had completed its review of the Form N-CEN amendments and guidance on liquidity risk management program requirements and that those aspects of the August 2024 release were unchanged, also noting that they were not challenged in the Fifth Circuit litigation.

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

GUIDANCE AND OTHER DEVELOPMENTS

SEC Staff No-Action Letter Allows Issuers to Rely on High Minimum Investment Amounts to Verify Purchasers in Rule 506(c) Offerings

On March 12, 2025, the staff of the SEC issued no-action guidance providing that certain minimum investment amounts, along with certain written representations from the purchaser, could constitute "reasonable steps" to verify a purchaser's accredited investor status in an offering conducted under Rule 506(c) of Regulation D. As a practical matter, this guidance enables issuers to rely on investors' self-certification of their eligible status in certain circumstances, similar to the long-standing approach the industry has taken with respect to offerings conducted under Rule 506(b). Our general expectation is that more issuers (including private funds) will take advantage of this accommodative guidance and conduct offerings through the use of general solicitation and general advertisement.

To rely on the SEC staff's no-action position, an issuer must:

- require minimum investment amounts (including binding commitments) of at least $200,000 for individuals, $1,000,000 for entities and, for entities accredited solely as a result of the accredited investor status of all of their equity holders, $200,000 for each equity holder;
- obtain a written representation from the purchaser that they qualify as an accredited investor (or an entity, all the equity owners of which qualify as accredited investors) as a result of being a natural person with an individual or joint net worth of $1,000,000, a natural person with an individual income of $200,000 or a joint income of $300,000, an entity with total assets in excess of $5,000,000, an entity owning investments in excess of $5,000,000 or a family office with assets under management in excess of $5,000,000;
- obtain a written representation from the purchaser that the purchaser's minimum investment amount[1] is not financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer; and
- have no actual knowledge that any purchaser is not an accredited investor or that any purchaser's minimum investment amount was financed in whole or in part by any third party for the specific purpose of making the particular investment in the issuer.

Read the SEC staff's no-action letter here. Read the incoming letter here.

[1]To clarify, purchasers would be able to finance any investment amount beyond the $200,000 or $1,000,000 minimums.

SEC Provides Helpful Marketing Rule FAQ Guidance

On March 19, 2025, the SEC updated its frequently asked questions (FAQs) relating to Rule 206(4)-1 under the Investment Advisers Act of 1940 (the Marketing Rule). The new FAQs permit the use of certain performance-related metrics (e.g., yield, coupon rate, contribution to return, volatility, sector or geographic returns, attribution analyses, the Sharpe ratio, the Sortino ratio, and other similar metrics) and extracted performance on a gross basis in advertisements, provided certain basic conditions are met. The FAQs reverse previous FAQ guidance from the SEC requiring the presentation of extracted performance on a net basis. Given the limitations and complexities associated with calculating certain metrics on a net basis, this FAQ guidance will be welcomed by the industry.

The new FAQs provide investment advisers flexibility to present extracted performance and certain performance-related metrics on a gross basis, without also presenting the corresponding net metrics provided the advertisement meets certain specific conditions:

- the extracted performance and/or performance-related metrics is clearly identified as being calculated on a gross basis;
- the extracted performance and/or performance-related metrics is accompanied by a presentation of the total portfolio's gross and net performance consistent with the requirements of the Marketing Rule;
- the gross and net performance of the total portfolio is presented with at least equal prominence to, and in a manner designed to facilitate comparison with, the extracted performance and/or performance-related characteristics; and
- the gross and net performance of the total portfolio is calculated over a period that includes the entire period over which the extracted performance and/or performance-related metrics is calculated.

Investment advisers seeking to take advantage of the additional flexibility provided by the new FAQs should review their marketing materials and disclosures, as well as their related policies and procedures, for conformance with the new FAQs.

SEC Set to Approve More Flexible Co-Investment Exemptive Relief for Closed-End Funds and BDCs

On April 3, 2025, the SEC issued a notice of its intent to grant a new streamlined version of co-investment exemptive relief (New Relief) that would permit registered closed-end funds and business development companies (Regulated Funds), but not open-end mutual funds or ETFs, to participate in joint co-investment transactions with affiliates. The New Relief simplifies and relaxes many of the conditions that are currently required under existing co-investment relief orders that are relied upon throughout the industry (Existing Relief). The New Relief will reduce the administrative burden on fund boards, feature less onerous board reporting, and rely on a more principles-based approach anchored in an adviser's fiduciary duties and a board's reasonable business judgement. Unless the SEC receives a request for a hearing by April 28, 2025, the SEC will issue an order granting the New Relief.

Pre-Existing and Follow-On Investment Restrictions, and Board Approval of Transactions. The Existing Relief requires a Regulated Fund's disinterested directors to approve each co-investment transaction, follow-on investment, and disposition in advance, unless the transaction is allocated among the participants pro rata or consists of tradable securities. This can result in significant administrative burden for boards between regular board meetings. Furthermore, the Existing Relief does not allow a Regulated Fund to participate in a co-investment transaction if an affiliate, but not the Regulated Fund, already has an investment in the issuer (known as "propping up"). The Existing Relief also prohibits Regulated Funds and affiliates from participating in follow-on investments unless they participated in the original co-investment transaction.

The New Relief eliminates the propping up and follow-on investment restrictions and requires that disinterested directors pre-approve co-investment transactions only when a Regulated Fund's affiliate already has an investment in the security's issuer and the Regulated Fund either does not hold the same securities of the issuer or is not participating in the transaction with the other affiliated holders of the security on a pro rata basis. The New Relief also requires that the Regulated Fund's board, including the disinterested directors, (i) review the adviser's Co-Investment Policies (discussed below), to ensure they are reasonably designed to prevent the Regulated Fund from being disadvantaged by participation in the co-investment program; and (ii) approve policies and procedures of the Regulated Fund that are reasonably designed to ensure compliance with the terms of the New Relief.

Order Allocation. The Existing Relief requires a Regulated Fund's adviser to offer all co-investment transactions that fall within the Regulated Fund's investment objectives and strategies and board established criteria to the Regulated Fund. The New Relief eliminates this requirement and instead requires the Regulated Fund's adviser to adopt and implement Co-Investment Policies that are reasonably designed to ensure that (i) opportunities to participate in co-investment transactions are allocated in a manner that is fair and equitable to each Regulated Fund, and (ii) the adviser negotiating the co-investment transaction considers the interest in the transaction of any participating Regulated Fund.

Board Reporting. The Existing Relief requires quarterly reporting to a Regulated Fund's board that details each co-investment transaction over the relevant quarter, including co-investment opportunities declined by the Regulated Fund. The New Relief requires the Regulated Fund's adviser and chief compliance officer to provide quarterly and annual reports containing information requested by the board and a summary of matters deemed material during the period. The quarterly reports must provide information related to the Regulated Fund's participation in co-investment transactions and a summary of any significant matters arising under the adviser's Co-Investment Policies and the Regulated Fund's policies and procedures. The annual reports must provide information related to the Regulated Fund's participation in the co-investment program and any material changes in affiliates' participation in the co-investment program, including changes to an affiliate's Co-Investment Policies.

Scope of Relief. Compared to the Existing Relief, the New Relief extends co-investment opportunities to a broader list of affiliated entities, including all private funds relying on any provision of Section 3(c) of the 1940 Act (e.g., collective investment trusts), joint ventures formed by Regulated Funds, and Regulated Funds that are sub-advised by an applicant for the New Relief where the Regulated Fund's primary investment adviser is not an applicant or affiliate of an applicant.

The application for the New Relief is available here, and the SEC's notice of intent to grant the New Relief is available here.

SEC Staff Updates Form PF Frequently Asked Questions

Over the past two years, the SEC has adopted a series of significant amendments to Form PF, which is the confidential reporting form originally adopted by the SEC in 2011 that is filed by certain SEC-registered private fund investment advisers. Recent amendments to Form PF have enhanced reporting requirements for private equity fund advisers and large hedge fund advisers, required additional information regarding liquidity funds, and most recently, in 2024, enhanced regulatory oversight and investor protection efforts in the private fund industry.

In April 2025, the staff of the SEC's Division of Investment Management issued updates to its existing FAQs that address various questions related to Form PF. Following the recent amendments to Form PF, the Division staff determined to withdraw certain Form PF FAQs because, for example, the FAQ is moot, superseded, or otherwise inconsistent with the recent amendments.

The updated Form PF FAQs are available here. A chart showing prior FAQs that the staff has withdrawn is available here.

President Trump Issues Executive Action Directing the Repeal of Unlawful Regulations

On April 9, 2025, President Trump issued a presidential memorandum (the order) directing the heads of all Federal agencies to identify unlawful or potentially unlawful regulations that clearly exceed the agency's statutory authority or are otherwise unlawful and to take steps to repeal those regulations, or unlawful portions thereof. The order instructs agencies to prioritize regulations in conflict with recent U.S. Supreme Court decisions that, according to the order, "recognize appropriate constitutional boundaries on the power of unelected bureaucrats and that restore checks on unlawful agency actions." U.S. Supreme Court decisions cited in the order include *Loper Bright Enterprises v. Raimondo*, in which the Court overruled the broad deference courts afforded to an agency interpretation of a statute administered by that agency, as established in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, and *SEC v. Jarkesy*, in which the Court held that a defendant facing civil penalties in a securities fraud claim brought by the SEC has a right to a jury trial in a Federal court.

The order directs agency heads to repeal the identified unlawful regulations without public notice and comment, where doing so is consistent with the "good cause" exception under the Administration Procedures Act. The order builds on a prior executive action issued on February 19, 2025, as summarized here, implementing a deregulatory initiative within the executive branch to focus resources on "regulations squarely authorized by constitutional Federal statutes."

The order is available here.

Paul S. Atkins Sworn in as SEC Chairman

On April 21, 2025, Paul S. Atkins was sworn in as the new Chairman of the SEC. Mr. Atkins was nominated by President Trump on January 20, 2025, and confirmed by the U.S. Senate on April 9, 2025 in a 52 to 44 vote. He replaces Acting Chairman Mark Uyeda, who was appointed to the role on January 21, 2025 to replace former Chairman Gary Gensler. Mr. Uyeda continues to serve as an SEC Commissioner through his current term which expires in 2028.

Chairman Atkins is a former SEC commissioner, serving under President George W. Bush from 2002 through 2008. During his tenure as a commissioner, Mr. Atkins advocated for transparency, consistency, and the use of cost-benefit analysis at the SEC. Prior to rejoining the SEC, Chairman Atkins served as CEO of Patomak Global Partners, a financial services consulting firm he founded in 2009. Chairman Atkins also served as co-chair of the Token Alliance, an initiative of the Digital Chamber (formerly, the Chamber of Digital Commerce), leading industry efforts to develop best practices for digital asset issuances and trading platforms.

A statement from the SEC regarding Chairman Atkins is available here.

SEC Division of Corporation Finance Staff Issues Guidance on Crypto Assets

As previously summarized here, 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 to help the SEC develop a comprehensive regulatory framework for crypto assets. To provide greater clarity on the application of the federal securities laws to crypto assets while those efforts are ongoing, the staff of the SEC's Division of Corporation Finance recently issued a series of statements to provide its views on various topics related to crypto assets, including "meme coins," mining of crypto assets, "stablecoins," and disclosure requirements for offerings and registrations of securities in crypto asset markets, as summarized below. SEC staff statements represent the views of the staff and have no legal force or effect.

On February 27, 2025, the staff issued a statement on meme coins, a type of crypto asset that is inspired by internet memes and the value of which is driven primarily by market demand and speculation. The staff stated its view that meme coins, as described by the staff, are not securities and, accordingly, the offer and sale of meme coins are not required to be registered with the SEC under applicable federal securities laws. The staff's statement on meme coins is available here.

On March 20, 2025, the staff issued a statement on mining of crypto assets on "proof-of-work" networks (protocol mining). The staff stated its view that protocol mining activities, as described by the staff, do not involve the offer and sale of securities and, accordingly, crypto asset transactions in the context of protocol mining activities are not required to be registered with the SEC under applicable federal securities laws. The staff's statement on protocol mining is available here.

On April 4, 2025, the staff issued a statement on stablecoins that reference the U.S. Dollar and are backed by assets held in a reserve. Stablecoins are a type of crypto asset designed to maintain a stable value relative to the reference asset and can be redeemed on a one-for-one basis (e.g., one stablecoin for one U.S. Dollar). The staff stated its view that transactions in stablecoins, as described by the staff, do not involve the offer and sale of securities and, accordingly, are not required to be registered with the SEC under applicable federal securities laws. The staff's statement on stablecoins is available here.

On April 10, 2025, the staff issued a statement on the application of certain disclosure requirements to offerings and registrations of securities in crypto asset markets. The statement reflects the staff's observations regarding disclosures provided in response to existing requirements under applicable federal securities laws as well as the staff's views on specific questions received from market participants. The statement covers disclosure requirements relating to: (1) the description of the issuer's business; (2) material risk factors; (3) the description of the issuer's securities, including security holder rights, obligations and preferences, technical specifications related to the security or subject crypto asset, and information regarding the supply of the security or subject crypto asset; (4) directors, executive officers and significant employees of the issuer; (5) financial statements of the issuer; and (6) exhibits. The staff's statement on these disclosure requirements is available here.

Litigation and Enforcement Matters

ENFORCEMENT DEVELOPMENTS

SEC Obtains Final Judgment Against Investment Adviser Regarding Alleged Failure to Disclose Material Conflicts of Interest and Breach of Its Fiduciary Duty

On March 19, 2025, the SEC obtained a final judgment against a registered investment adviser regarding the adviser's alleged failure to disclose material conflicts of interest and breach of its duty of care related to its conversion of client accounts to wrap accounts and its selection of mutual funds and money market cash sweep funds for clients.

According to the SEC's March 1, 2022 complaint, the adviser "regularly and repeatedly put its financial interests ahead of its clients." According to the complaint, beginning in July 2017 the adviser repeatedly violated its fiduciary duty to clients by converting certain traditional accounts to wrap accounts without disclosing that the adviser had a financial incentive to make the conversions, due to the higher advisory fees on the wrap accounts, and without adequately determining whether the conversion was in each client's best interest. The SEC alleged that the adviser instead provided clients with false and misleading information regarding the necessity for the conversions. The SEC also alleged that, although the adviser's all-in advisory fee on wrap accounts covered both investment advice and transaction fees, the adviser invested wrap account client assets in more expensive no transaction fee (NTF) mutual funds, for which the adviser avoided paying millions of dollars in transaction fees out of its wrap fee revenue, when lower-cost fund options were available for the client accounts. According to the SEC's complaint, from at least January 2014 the adviser violated its fiduciary duty to clients by failing to disclose its conflicts of interest associated with recommending NTF mutual funds to its wrap account clients, investing wrap account clients in NTF funds that were not in the clients' best interest, failing to seek best execution, and failing to evaluate whether clients should be moved to a lower-cost mutual fund option.

The SEC also alleged that, from at least January 2014, the adviser failed to act consistent with its duty of care obligations and failed to disclose its conflicts of interest to its clients when the adviser invested client assets in certain mutual funds and money market cash sweep funds that generated millions of dollars in revenue sharing payments to the adviser's affiliated broker-dealer while other less expensive options (that did not provide additional compensation to the affiliated broker-dealer) were available.

Without admitting or denying the allegations, the adviser consented to the entry of the final judgment, permanently enjoining it from violating Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-7 thereunder. The adviser has been ordered to pay $15 million in disgorgement, prejudgment interest, and a civil monetary penalty.

The final judgment from the U.S. District Court for the Southern District of Iowa is available here, and a related press release is available here. The SEC's complaint is available here.

SEC Settles Enforcement Proceedings Against Adviser Regarding Alleged False and Misleading Information in a Commission Filing

On April 7, 2025, the SEC announced the settlement of administrative proceedings brought against a registered investment adviser for allegedly causing its registered investment company client to include materially false and misleading information in the fund's application to deregister as a registered investment company.

According to the order, the fund held shares of certain companies that were subject to shareholder class action litigation and the fund and its shareholders stood to benefit

from potential distributions of class action settlement proceeds. The SEC alleged that as part of the board-approved liquidation of the fund, the adviser failed to consider whether pending class action claims could be monetized for the benefit of the fund's shareholders prior to the redemption of their fund shares. The SEC further alleged that after the December 2016 liquidation of the fund and redemption of fund shares, the adviser continued to receive sporadic distributions of class action settlement proceeds related to the fund's prior holdings and that the adviser did not distribute the proceeds to the fund's former shareholders. In March 2017, the fund, assisted by the adviser, filed with the SEC the fund's application for deregistration as a registered investment company on Form N-8F. The SEC alleged that the application incorrectly stated that the fund had distributed all its assets to shareholders, that the fund had no remaining assets, and that the fund was not party to any litigation or administrative proceeding.

The SEC found that the adviser caused the fund to violate Section 34(b) of the Investment Company Act of 1940, which makes it unlawful for any person to make any untrue statement of material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Investment Company Act, or for any person filing, transmitting, or keeping such document to omit to state therein any fact necessary in order to prevent the statements made therein from being materially misleading. Without admitting or denying the allegations, the adviser agreed to cease and desist from future violations and pay disgorgement, prejudgment interest, and a civil monetary penalty totaling $599,953. The order acknowledged the remedial acts undertaken by the adviser.

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

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Investment Services Group

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