

# Regulatory Insights

## TABLE OF CONTENTS

### SEC LEADERSHIP CHANGES

#### SEC RULEMAKING

- Tailored Reports and Rule 498B
- Fund Fair Value Rule
- Fund Derivatives Rule
- Fund of Funds—Final Rule

#### REGULATORY INITIATIVES

- SEC's Asset Management Advisory Committee
- E-Delivery
- Reg BI Updates

#### PROXY ITEMS

- Amendments to Modernize Shareholder Proposal Rule
- NYSE Fee Schedule Proposals
- Proposed Amendments Regarding the CAT

#### DOL—RETIREMENT ITEMS

- DOL's Lifetime Income Rule
- Financial Factors in Selecting Plan Investments—Final Rule
- DOL Proxy Voting—Rule Proposal
- Proposed Prohibited Transaction Class Exemption to Provide Fiduciary Advice

#### OTHER REGULATORY ITEMS

- SRD II
- SEC's COVID-19 Relief
- SEC's Investor Advisory Committee
- Rule 701 – Proposed Rule Amendments
- SEC Equity Compensation Proposal
- Amendments to Modernize and Enhance Certain Disclosures
- SEC Compliance Alerts

### SEC LEADERSHIP CHANGES

#### SEC Chairman Jay Clayton Confirms Plans to Conclude Tenure at Year End

- On November 16, 2020, the SEC announced Chairman Jay Clayton will step down at the end of the year after serving as chairman since May 2017.
  - The entire announcement, which includes an overview of Clayton's achievements, can be found at: <https://www.sec.gov/news/press-release/2020-284>

#### Division of Corporation Finance Director Bill Hinman Plans to Step Down at End of 2020

- On October 27, 2020, the SEC announced Division of Corporation Finance Director Bill Hinman, who joined the SEC in May 2017, will conclude his tenure at the end of 2020.
  - The entire press release, which includes an overview of Hinman's time at the SEC, can be found at: <https://www.sec.gov/news/press-release/2020-268>



### SEC RULEMAKING

#### Tailored Reports and Rule 498B—Rule Proposal

- On August 5, 2020, the SEC proposed a rule to streamline mutual fund and ETF annual and semiannual reports, add a new optional prospectus delivery method for existing investors and update certain sections of fund prospectuses.
  - Public comments on the proposal are due on January 4, 2021.
    - Press release and fact sheet: <https://www.sec.gov/news/press-release/2020-172>
    - A pdf of the rule proposal: <https://www.sec.gov/rules/proposed/2020/33-10814.pdf>
    - Sample summary report: [https://www.sec.gov/files/final\\_2020\\_im\\_annual-shareholder%20report.pdf](https://www.sec.gov/files/final_2020_im_annual-shareholder%20report.pdf)

## Fund Fair Value Rule—Final Rule

- On December 3, 2020, the SEC adopted a new rule that establishes an updated regulatory framework for fund valuation practices. The SEC designed the rule “to clarify how fund boards of directors can satisfy their valuation obligations in light of market developments.”
- The press release and adopting release can be found at: <https://www.sec.gov/news/press-release/2020-302>

## Fund Derivatives Rule

- On October 28, 2020, the SEC adopted a new rule for derivatives used by registered funds and BDCs.
  - The press release and adopting release can be found at: <https://www.sec.gov/news/press-release/2020-269>

## Fund of Funds—Final Rule

- On October 7, 2020, the SEC adopted Rule 12d1-4 and related amendments under the Investment Company Act of 1940 to streamline and enhance the regulatory framework applicable to fund of funds arrangements.
  - October 7, 2020 press release: <https://www.sec.gov/news/press-release/2020-247>
  - Final rule: <https://www.sec.gov/rules/final/2020/33-10871.pdf>



## REGULATORY INITIATIVES

### SEC's Asset Management Advisory Committee

- The Asset Management Advisory Committee was formed to provide the SEC with diverse perspectives on asset management and advice and recommendations.
  - An overview of the committee and a link to its homepage can be found at: <https://www.sec.gov/page/asset-management-advisory-committee>
- On December 1, 2020, the Asset Management Advisory Committee held a meeting to discuss matters pertaining to the asset management industry.
  - Meeting agenda: <https://www.sec.gov/news/press-release/2020-296>

## E-Delivery

- The securities industry has called on the SEC to update its e-delivery guidance.
- White papers recently submitted to the SEC include:
  - SIFMA: <https://www.sifma.org/resources/submissions/e-delivery-modernizing-the-regulatory-communications-framework-to-meet-investor-needs/>
  - ICI: <https://www.sec.gov/comments/265-33/26533-7964920-224992.pdf>
  - Joint Fund Letter: <https://www.blackrock.com/corporate/literature/publication/sec-joint-industry-letter-digital-delivery-090820.pdf>
  - SEC Asset Management Advisory Committee Recommendation: <https://www.sec.gov/spotlight/amac/operational-issues-amac-recommendations-final-110520.pdf>
- The Department of Labor recently adopted a new rule to increase e-delivery to workplace savings accounts:
  - Final Rule and Release: <https://www.federalregister.gov/documents/2020/05/27/2020-10951/default-electronic-disclosure-by-employee-pension-benefit-plans-under-erisa>
  - Fact Sheet: <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/electronic-disclosure-safe-harbor-for-retirement-plans>
  - Press Release: <https://www.dol.gov/newsroom/releases/ebsa/ebsa20200521>

## Reg BI Updates

- The SEC and FINRA discussed initial exam findings at the SEC's Staff Roundtable on Regulation BI and Form CRS on October 26, 2020.
- Chairman Clayton's public statement: <https://www.sec.gov/news/public-statement/clayton-statement-roundtable-reg-best-interest-crs-102620>
  - A replay of the webcast of the roundtable is available here: <https://www.sec.gov/regulation-best-interest>
  - Joint Statement Regarding New FAQs for Form CRS: <https://www.sec.gov/news/public-statement/joint-statement-faq-form-crs>
  - The updated Form CRS FAQs can be found at: <https://www.sec.gov/investment/form-crs-faq>
- The DOL and certain states are also undertaking rulemaking to update their standard of conduct rules.

## PROXY ITEMS

### SEC Adopts Amendments to Modernize Shareholder Proposal Rule

- The SEC's stated goal is to "facilitate engagement among shareholder-proponents, companies and other shareholders, including preserving the ability of smaller shareholders to access proxy statements."
  - September 23, 2020 press release:  
<https://www.sec.gov/news/press-release/2020-220>
  - Final rule:  
<https://www.sec.gov/rules/final/2020/34-89964.pdf>

### NYSE Fee Schedule Proposals

- In November 2020, the NYSE proposed two changes to the fee schedule: (i) shift oversight of the proxy and interim fee schedule to FINRA; (ii) prohibit brokers from submitting for issuer reimbursements for shares that the broker "gifts" to a client account.
- Both proposals are subject to public comment and SEC approval:
  - NYSE proposal to shift Proxy Fee Schedule oversight to FINRA can be found at:  
<https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2020/SR-NYSE-2020-96.pdf>
  - NYSE Proposed Rule 451A Fee Exclusion for Shares Distributed by Member Organizations Without Charge:  
<https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2020/SR-NYSE-2020-98.pdf>

### Proposed Amendments to the National Market System Plan Governing the CAT

- The SEC is proposing amendments to the national market system plan governing the consolidated audit trail (CAT) to enhance the security of the CAT.
  - Release and proposed amendments:  
<https://www.sec.gov/rules/proposed/2020/34-89632.pdf>



## DOL—RETIREMENT ITEMS

- **DOL's Lifetime Income** rule goes into effect on Sept. 18, 2021 and will apply to annual retirement plan statements sent to participants after that date.
  - The DOL's press release, fact sheet, interim final rule and comment letters:  
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB20-2>
- **Financial Factors in Selecting Plan Investments**
  - The DOL adopted a final rule that can be found at:  
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB95>
- **DOL Proxy Voting—Rule Proposal**
  - The DOL has submitted a final rule to the Office of Management and Budget for approval. The proposed rule can be found at:  
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB91>
- **DOL's Proposed Prohibited Transaction Class Exemption to Provide Fiduciary Advice**
  - The DOL has submitted a final rule to OMB for approval.
  - The rule can be found at:  
<https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA29>

## OTHER REGULATORY ITEMS

### • SRD II

– The updated Shareholder Rights Directive (SRD II) went into effect on September 3, 2020.

– Read more here:

<https://www.broadridge.com/assets/pdf/broadridge-eversheds-navigating-compliance-srdii-february-2020.pdf>

### • SEC's COVID-19 Response

– See the SEC's COVID-19 relief actions:

<https://www.sec.gov/sec-coronavirus-covid-19-response>

### • SEC's Investor Advisory Committee

– The SEC's Investor Advisory Committee met on December 3, 2020.

– Meeting agenda:

<https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac120320-agenda.htm>

### • Rule 701—Proposed Rule Amendments

– On Nov. 24, 2020, the SEC proposed rule amendments to Securities Act Rule 701, which provides an exemption from registration for the issuance of compensatory securities by non-reporting issuers, and Form S-8, the Securities Act registration statement for compensatory offerings by reporting issuers.

– The press release and proposal can be found at:

<https://www.sec.gov/news/press-release/2020-294>

### • SEC Equity Compensation Proposal

– The Commission proposed rules to permit issuers to provide equity compensation to certain “platform workers” who provide services available through the issuer’s technology-based marketplace platform.

– The press release and proposal can be found at:

<https://www.sec.gov/news/press-release/2020-293>

### • SEC Adopts Amendments to Modernize and Enhance Management’s Discussion and Analysis and Other Financial Disclosures

– The press release and adopting release can be found at:

<https://www.sec.gov/news/press-release/2020-290>

### • SEC Compliance Alerts

– On November 16, 2020, the Office of Compliance Inspections and Examinations (OCIE) staff issued a statement on recent enforcement matters involving “VIX-Related” and other complex exchange ETPs.

• The November 16, 2020 press release can be found at:

<https://www.sec.gov/news/public-statement/ocie-vix-matters-2020-11-16>

– On November 19, 2020, OCIE issued a Risk Alert on their Investment Advisor Compliance Program:

[https://www.sec.gov/files/Risk%20Alert%20IA%20Compliance%20Programs\\_0.pdf](https://www.sec.gov/files/Risk%20Alert%20IA%20Compliance%20Programs_0.pdf)

– On October 28, 2020, the SEC issued a joint statement regarding complex financial products and retail investors.

• The statement can be found at:

<https://www.sec.gov/news/public-statement/clayton-blass-hinman-redfearn-complex-financial-products-2020-10-28#ftnref3>

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## FOR MORE INFORMATION

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